

LIBRARY
COURT, U. S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

vs.

LARS FORSENIEUS, ET AL.

**APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

FILED - AUGUST 7, 1964
PROBABLE JURISDICTION NOTED OCTOBER 12, 1964

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 360

A. M. HARMAN, JR., ET AL., APPELLANTS,

vs.

LARS FORSSENIUS, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

INDEX

Original Print

Record from the United States District Court for the Eastern District of Virginia at Richmond	1	1
Complaint in Civil Action No. 3897		
Attachments—Acts of the General Assembly, 1963 Special Session, Chapters 1, 2, 3 (ap- proved November 21, 1963)	7	5
Attachment—Amendment XXIV to United States Constitution	15	18
Complaint in Civil Action No. 3898	16	19
Pre-trial order	38	23
Answer of defendant James E. Peters to com- plaint in No. 3897	48	25
Motion to stay proceedings in No. 3897	49	26
Motion to stay proceedings in No. 3898	53	28
Motion to dismiss in No. 3897	57	31
Motion to dismiss in No. 3898	59	32
Answer of defendants A. M. Harman, Jr., Levin Nock Davis, and Harry Vaughan to complaint in No. 3897	63	35

Original Print

Record from the United States District Court for
the Eastern District of Virginia at Richmond—
Continued

Answer of defendants A. M. Harman, Jr., Levin Nock Davis, and Harry Vaughan to complaint in No. 3898	66	37
Answer of defendant Lewis M. Coyner in <i>Henderson v. Harman</i>	69	39
Stipulation	70	40
Opinion, Bryan, J.	72	42
Final order	82	51
Notice of appeal to the Supreme Court of the United States	84	52
Plaintiffs' exhibits:		
1—Memo from State Board of Elections to Members of Electoral Board, dated December 19, 1963	91	55
2—Memo from State Board of Elections to Clerk of the Court, dated March 9, 1964	92	56
3—Memo from State Board of Elections to the Treasurers, dated December 19, 1963	93	57
4—Memo from State Board of Elections to the Treasurer, dated February 10, 1964	94	59
5—Memo from State Board of Elections to the Treasurer, dated March 5, 1964	95	60
6—Memo from State Board of Elections to the General Registrar, dated February 14, 1964	96	61
7—Application for registration—form for all elections	98	65
8—Application for registration—form for federal elections only	99	66
9—Certificate to transfer registration—form for all elections	100	67
10—Certificate to transfer registration—form for federal elections only	101	68
11—Certificate of continuing residence—form	102	69
Defendants' exhibits:		
29—Address of Governor Albertis S. Harrison, Jr. to the General Assembly of Virginia on November 19, 1963—Senate Doc. No. 1	103	71

Original Print

Record from the United States District Court for
the Eastern District of Virginia at Richmond—
Continued

Defendants' exhibits—Continued

30—Statement of Attorney General Robert Y. Button delivered on November 12, 1963, and November 19, 1963, and affidavit thereto	114	83
31—Suggested changes to Virginia Election Laws in connection with proposed 24th amendment to the Constitution of the United States, with comments	125	91
36—Letter from Attorney General Robert Y. Button to Miss Waneta M. Buckley, Gen- eral Registrar for Fairfax County, dated March 11, 1964	139	105
37—Letter from Attorney General Robert Y. Button to Mr. F. B. Huber, Treasurer of Campbell County, dated March 17, 1964	144	110
38—Letter from Attorney General Robert Y. Button to Mr. R. Crockett Gwyn, Jr., Member, House of Delegates, dated March 17, 1964	146	112
Clerk's certificate (omitted in printing)	148	113
Order noting probable jurisdiction	149	114

[fol. 1]

[File endorsement omitted.]

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA, AT RICHMOND**

Civil Action No. 3897

**LARS FORSENUS (Hollins Station)
Roanoke, Virginia, Plaintiff,**

v.

**A. M. HARMAN, JR., Pulaski, Virginia; LEVIN NOCK DAVIS,
Richmond, Virginia; HARRY VAUGHAN, Hopewell, Vir-
ginia, Members of the State Board of Elections, and
JAMES E. PETERS, Salem, Virginia, Treasurer of Roa-
noke County, Virginia, Defendants.****COMPLAINT—Filed February 26, 1964****Plaintiff would show unto the Court that:****I.**

This action arises under the Constitution and laws of the United States, to wit: U. S. Constitution Article I, Section 2, Amendment XIV; Amendment XVII; and Amendment XXIV; Title 28, U. S. Code, Section 1331; Title 28, U. S. Code, Section 1343; Title 42, U. S. Code, Section 1983 and Title 42, U. S. Code, Section 1988, as hereinafter more fully appears.

II.

A. Plaintiff not only sues for himself but also on behalf of all other voters similarly situated in the Commonwealth of Virginia, by way of class action under Rule 22 of the Rules of Civil Procedure.

[fol. 2] **B.** Plaintiff seeks not only injunctive relief, but also alleges an actual controversy exists within the jurisdiction of this court and seeks a declaratory judgment on his rights under Title 28, U. S. Code, Section 2201, and Rule 57 of the Rules of Civil Procedure.

III.

He is the Vice-Chairman of the Young Republican Federation of Virginia, and is a citizen and resident of Roanoke County, Virginia, and has been a registered voter in said County for more than three years. He has not paid his State Capitation Tax for the year 1963, but has for the years 1961 and 1962. As such citizen, resident, and voter, he has an interest in the result of all elections, primary or otherwise, for United States Senator from Virginia, member of the United States House of Representatives from his Congressional District, and for electors for President and Vice-President of the United States. He does not propose to pay the State Capitation Tax for the year 1963 in order to vote in the next forthcoming federal elections and further does not propose to file a certificate of continuing residency, as required by the Acts of Assembly hereinafter referred to, six months prior to the election of a federal officer in order to vote in the next forthcoming federal elections.

Plaintiff is informed and believes, and upon such information and belief states the fact to be, that the Constitution of the United States of America requires that no poll tax may be imposed as a prerequisite to voting in a Federal election and cites the language of U. S. Constitutional Amendment XXIV heretofore passed and effective in January, 1964. Plaintiff further states that this Constitutional provision is adversely affected by the laws of the State of Virginia as hereinafter recited in paragraph IV. [fol. 3] Plaintiff believes that the imposition of the Acts of the Legislature of the State of Virginia in requiring a certificate of continuing residency to be filed six months prior to the election of a federal officer is an unreasonable imposition upon the rights of the plaintiff, and is an effort to deprive the plaintiff of his privilege of voting in federal elections. The said Acts violate the Constitution of the United States of America and said Acts are illegal, unconstitutional and without force of law in the following respects, among others: that they effectively deprive your plaintiff and others in like circumstances of their right to vote in State and Federal elections.

The defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, are members of the State Board of Elections who are charged by Virginia law with the administration and supervision of the exercise of the privilege of franchise in the Commonwealth.

The defendant, James E. Peters is the Treasurer of Roanoke County, Virginia, and as such, on or about February 19, 1964, accepted and filed from voters other than this plaintiff in Roanoke County in accordance with the Acts of Assembly hereinafter mentioned, several Certificates of Continuing Residency as set forth in said Acts of Assembly.

IV.

Amendment XXIV to the Constitution of the United States bans the payment of a poll or any other tax as a prerequisite for voting in federal elections as therein defined. Said amendment became effective in January, 1964. [fol. 4] On November 21, 1963, there were approved as enacted by the General Assembly of Virginia, at special session, to be effective February 18, 1964, certain acts affecting the privilege of franchise in Virginia which are here referred to briefly as follows:

- (a) Acts, 1963 Special Session Chapter I. (Applicable only to calendar year 1964 only.)
- (b) Acts, 1963 Special Session, Chapter 2. (Applicable to 1964 and subsequent elections.)

A copy of said Acts of Assembly is filed herewith and prayed to be read as a part hereof, as is a copy of Amendment XXIV to the U. S. Constitution.

V.

In brief, said Acts of Assembly require from all persons desiring to vote in Federal elections without the payment of a poll tax as allowed by said Amendment XXIV, the filing of forms as to residence with their local treasurer, and performing certain other acts, none of which is required if poll tax is paid.

4

The registrar under said Acts of Assembly is required to keep separate registration books, one known as Roll of Persons Registered for All Elections, the other known as Roll of Persons Registered for Federal Elections only.

VI.

Plaintiff alleges that said Acts of Assembly establish qualifications for voters in Federal elections, as defined in said Amendment XXIV, different from qualifications requisite for electors for the House of Delegates of Virginia, which is in violation of Article I, Section 2; Amendment XIV, and Amendment XVII of the U. S. Constitution, and an attempted evasion of said Amendment XXIV.

[fol. 5] Plaintiff alleges that defendants under color of said Acts of Assembly cause him to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States, and deprive him of the equal protection of the laws.

Plaintiff alleges that all requirements of the Constitution and laws of Virginia requiring the payment of a poll tax as a prerequisite to voting in an election for the most numerous branch of the General Assembly of Virginia are void as repugnant to said Article I, Section 2; Amendment XVII, and Amendment XXIV, of the Constitution of the United States.

In Consideration Whereof, plaintiff prays:

- (1) That a district court of three judges be convened.
- (2) That said Acts of Assembly, and each part thereof, be declared null and void, and of no force or effect whatsoever, as being repugnant to the Constitution of the United States.
- (3) That the defendants, and each of them, their agents and servants be restrained and enjoined by the order of this court, pending the final determination of issues stated herein, and upon such determination be permanently restrained and enjoined, from enforcing, executing or administering the said Acts of Assembly, or doing any act thereunder, including but not exclusively, receiving any result of election, or issuing Certificates of Election, for any Federal election, conducted in whole or in part, under color of said Acts of Assembly.

(4) For general relief and his costs.

H. E. Widener, Jr., Bristol, Virginia; David H. Frackelton, Bristol, Virginia; L. S. Parsons, Jr., [fol. 6] Norfolk, Virginia; J. L. Dillow, Pearisburg, Virginia; John N. Dalton, Radford, Virginia; Bentley Hite, Christiansburg, Virginia, Attorneys for Plaintiff.

[fol. 7]

ATTACHMENT TO COMPLAINT
ACTS OF THE GENERAL ASSEMBLY

CHAPTER 1

An Act to authorize persons, in anticipation of ratification of the 24th Amendment to the Constitution of the United States, to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections to be held in the year 1964 without payment of a poll tax, to prescribe certain duties of the State Board of Elections, and to make an appropriation to the State Board of Elections.

[H 1]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (1) During the calendar year 1964 only and subject to the other provisions of this Act, every resident of Virginia who has been registered to vote prior to December 1, 1963, and who desires to vote during the calendar year 1964 without the payment of poll tax or any other tax, upon the adoption of the proposed 24th Amendment to the Constitution of the United States, in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in the Congress of the United States, may file a certificate of continuing residence in the office of the treasurer of his county or city, which shall be in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), residing at (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

.....
Witnessed:

.....
or

Subscribed and sworn to before me this
day of , 19

.....
Notary Public"

Such certificate shall be filed not later than six months prior to the general election held in November, 1964. Every such certificate shall bear the signature of the person offering the same and shall be verified by his affidavit or witnessed by at least one adult. Such certificate shall be conclusive of the facts stated therein, subject only to challenge under the provisions of § 24-253 of the Code.

(2) Such certificate shall be received by the treasurer, dated and marked filed, and upon the ratification of the proposed 24th Amendment to the Constitution of the United States, shall have the same force and effect as certificates of continuing residence filed under the provisions of § 24-17.2 of an Act of the General Assembly enacted at the special session of the General Assembly, 1963.

[fol. 8] (3) The State Board of Elections shall forthwith prepare and distribute to the several county and city treasurers books in which such treasurers shall record the certificates of residence as provided for in this Act. The certificates filed in the office of such treasurer shall be entered on such books alphabetically and by magisterial districts in counties and by wards or other election districts in cities.

2. There is hereby appropriated out of the general fund in the State treasury to the State Board of Elections a sum sufficient estimated at one thousand dollars.

CHAPTER 2

An Act to amend and reenact §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124 of the Code of Virginia, and to amend the Code of Virginia by adding thereto sections numbered 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, all of which amended and new sections relate to registration and voting in State, local and Federal elections, and to the duties of certain election officials; and to make an appropriation to the State Board of Elections.

[H 2]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. (a) Pursuant to the mandates of the Constitution of Virginia (including, without limitation, the provisions of Section 6 and Section 36 of the Constitution of Virginia), this Act is passed (1) to enable persons to register and vote in Federal elections without the payment of poll tax or other tax as required by the 24th Amendment to the Constitution of the United States, (2) to continue in effect in all other elections the present registration and voting requirements of the Constitution of Virginia, and (3) to provide methods by which all persons registered to vote in Federal or other elections may prove that they meet the residence requirements of Section 18 of the Constitution of Virginia.

(b) The right of any citizen of the Commonwealth of Virginia to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress of the United States, or to register to vote in any such primary or such election, shall not be denied or abridged by reason of failure to pay any poll tax or other tax.

2. That §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding §§ 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, the amended and new sections being as follows:

§ 24.17. Persons entitled to vote at all general elections.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, has been duly registered * under the provisions of § 24-67, and who, at least six months prior to such election in which he offers to vote, has personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, and [fol. 9] is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.1. Persons entitled to vote only at elections for certain Federal officers.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, and who has been duly registered under the provisions of § 24-67, but who, at least six months prior to such election in which he offers to vote, has not personally paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or who has been duly registered under the provisions of § 24-67.1, in either case if he is otherwise qualified under the Con-

stitution and laws of this State, shall be entitled to vote in the following elections and no other: primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

§ 24-17.2. Proof of residence required; how furnished.—
(a) No person shall be deemed to have the qualifications of residence required by Section 18 of the Constitution of Virginia and §§ 24-17 and 24-17.1 in any calendar year subsequent to that in which he registered under either § 24-67 or § 24-67.1, and shall not be entitled to vote in any election held in this State during any such subsequent calendar year, unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by personally paying to the proper officer, at least six months prior to any such election in which he offers to vote, all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to vote. Proof of continuing residence may only be established by either of such two methods.

(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), residing at (street and

number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

or

Subscribed and sworn to before me this
day of , 19

"Notary Public"

[fol. 10] Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253.

(d) The treasurer shall keep in his office for public inspection, for at least two years after the same are filed, the certificates mentioned in paragraph (b) of this section.

(e) Nothing contained in this or any other section of this Act shall be construed as affecting any of the provisions of Chapters 2.1 and 13.1 of Title 24 of the Code relating to voters in the armed services.

§ 24-28.1. State Board of Elections to furnish certain books and forms; appropriation therefor.—The State Board of Elections shall prepare such books as needed for use in recording the list of persons who have registered without the payment of a poll tax and forms for the filing of certificates of continuing residence and for the transfer of voters. Such books and forms shall be furnished by the Board to the clerks of the circuit courts of the counties and the corporation courts of the cities, to be by them distributed to the registrars and other election officials of their respective election districts. The Board shall as

soon as possible after the effective date of this section, furnish to each registrar in the State at least one of each of such books and forms along with printed instructions as to the purpose of the forms.

The Board shall as soon as possible after the passage of this Act cause to be printed a supplemental compilation of the election laws of this State, which shall include all the provisions of this Act and shall distribute the same to the election officials throughout the State. A sum sufficient not exceeding one thousand dollars is hereby appropriated out of the general fund of the State to the State Board of Elections for the purpose of paying the expenses incurred under this section.

§ 24-67. Who to be registered for all elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, * at the time of the next general election, shall have the qualifications of age and residence in Section 18 of the Constitution of Virginia, and who* has paid to the proper officer all State poll taxes assessed or assessable against him for the three years next preceding the year in which such election is held, or if he come of age at such time that no poll taxes shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him.

(b) The names of all persons who have been registered under paragraph (a) of this section shall be enrolled in the registration book or type of record in use on the effective date of this Act, which shall be known as "Roll of Persons Registered for All Elections."

(c) Persons registered under paragraph (a) of this section shall be registered to vote in every general, special or primary election held in this State; provided that no person registered under § 24-67.1 shall be deemed registered to vote in any general, special or primary elections except those elections for the offices enumerated in paragraph (c)

of § 24-67.1, until he shall have been registered under paragraph (a) of this § 24-67.

§ 24-67.1. Who to be registered only for Federal elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person [fol. 11] to be registered at the time and in the manner required by law, who, at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, but who has not paid all State poll taxes assessed or assessable against him as required in Section 20 of the Constitution of Virginia and § 24-67.

(b) The names of all persons who have been registered under paragraph (a) of this section, shall not be enrolled in the registration books referred to in § 24-67, but shall be enrolled in a separate registration book or other type of record, which shall be known as "Roll of Persons Registered for Federal Elections Only."

(c) Persons registered under paragraph (a) of this section shall be registered to vote only in primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States, and shall not by virtue of registration under this section be deemed to be registered to vote in any other general, special or primary elections held in this State.

§ 24-78. Lists of persons registered to be posted and certified to clerk.—It shall be the duty of the registrar within five days after each sitting to have posted at three or more public places in his jurisdiction separate written or printed lists of the names of all persons so admitted to registration, under §§ 24-67 and 24-67.1, respectively, and at the same time to also certify to the clerk of the circuit court of the county, or the corporation court of the city a true copy of such lists, and to have * each list posted on the day of the election at each place of voting in his juris-

diction, showing the names of such registrants residing in that precinct.

§ 24-79. *Clerk to record such lists.*—It shall be the duty of the clerk, upon receipt of such lists, to forthwith record in * separate suitable books, to be kept in his office for that purpose, the names of registered voters so certified, in alphabetical arrangement.

§ 24-87.1. *Designation of type of registration in certificate of transfer.*—Whenever any registrar shall issue a certificate of transfer under any provision of this chapter, he shall show on the certificate of transfer whether the person to whom the transfer was issued was registered under the provisions of § 24-67 or § 24-67.1. It shall be the duty of the registrar receiving the transfer, on its appearing to his satisfaction that the person to whom the certificate was issued has resided, prior to the next election, for thirty days in the election district to which he desires to transfer, to enter the name of such person on the registration books or other type of records of that precinct maintained for persons registered under the section shown on the certificate of transfer.

§ 24-119.2. *Applicability of certain sections.*—The provisions of §§ 24-68 through 24-119.1, inclusive, shall be applicable mutatis mutandis to persons registered under the provisions of § 24-67.1.

24-120. *Treasurer to file lists with clerk.*—The treasurer of each county and city shall, at least five months before the second Tuesday in June in each year in which a regular June election is to be held in such county or city, and at least one hundred and * fifty-eight days before each regular election in November, file with the clerk of the circuit court of his county or the corporation court of his city (1) a list of all persons in his county or city who have filed certificates of residence under § 24-17.2, and (2) a separate list of all persons in his county or city who have paid not later than six months prior to each of such dates the State poll taxes required by the Constitution of this State during three years next preceding that in which such election is to be held, which lists shall state the white

and colored persons separately, if known, and shall be verified by the oath of the treasurer. The treasurer shall, in each such list, designate as a tribal Indian any person [fol. 12] who requests to be so designated and who shall have furnished the treasurer with an affidavit, made by the Chief of any Indian tribe existing in this State, that such person is a member of such tribe and to the best knowledge and belief of the Chief is a tribal Indian as defined in § 1-14 of the Code of Virginia.

§ 24-121. Clerk to deliver copies of lists to sheriff or sergeant who shall post same; record of returns.—The clerk within ten days from the receipt of the lists filed pursuant to § 24-120 shall make and certify a sufficient number of copies * of each list, and shall deliver one copy of each list for each voting place in his county or city and one copy of each list for each of the registrars in * his county or city to the sheriff of * his county or sergeant of * his city, whose duty it shall be to post one copy of each list without delay, and in no event later than five days after receipt thereof, at each of the voting places and to deliver one copy of each list to each of the registrars in the county or city and within ten days from the receipt thereof to make return on oath to the clerk as to the places where and dates at which such copies were respectively posted and delivered. The clerk shall record the returns in a book kept in his office for the purpose. However, no failure upon the part of the sheriff or sergeant to deliver a copy of * such lists or either of them to any registrar shall operate to invalidate an election.

§ 24-122. Clerk to retain copies for public inspection.—The clerk shall keep in his office for public inspection, for at least sixty days after receiving the lists filed pursuant to § 24-120, not less than ten certified copies * of each list.

§ 24-123. Correction of lists.—Within thirty days after the lists * filed pursuant to § 24-120 have been so posted any person who shall have reason to believe that his name has been improperly omitted from either of such certified lists, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation

court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or judge shall promptly hear and decide. If it be decided that the name was improperly omitted, the judge shall enter an order to that effect and the clerk of the court shall correct the list furnished him by the treasurer accordingly, and deliver a certified copy of such corrected list to the judges of election at the precinct at which such voter is registered. It shall be the duty of the treasurer to revise the lists within ten days after *they have been posted as aforesaid and to correct any omissions or clerical or typographical errors.*

§ 24-124. *Duty of clerk to deliver lists with poll books, and forward copies to Comptroller.*—The clerk shall deliver, or cause to be delivered, with the poll books at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy * of each list filed pursuant to § 24-120, and the poll tax list shall be conclusive evidence of the facts therein stated for the purpose of voting. The clerk shall also, within sixty days after the filing of the poll tax list by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the Comptroller, who shall charge the amount of the poll taxes stated therein to such treasurer, unless previously accounted for.

§ 24-128.1. *Evidence of filing certificate of residence on transfer.*—In any case where a voter has been transferred from one city or county to another city or county, and has filed the certificate required by § 24-17.2, upon his request it shall be the duty of the treasurer of the county or city with whom the certificate was filed, to deliver to such person a certificate stating therein that such person filed in his office within the time prescribed by § 24-17.2 [fol. 13] the certificate required by that section. Such certificate of the treasurer when submitted by the person to whom it was issued to the judges of election at the precinct at which he offers to vote shall be conclusive evidence of the facts stated therein for the purpose of voting.

Any treasurer who shall give a false certificate so as to show that the certificate of residence has been filed six months before any election when in fact it has not been so filed shall be guilty of a misdemeanor. The granting of each false certificate shall constitute a separate offense.

3. *Severability Clause.*—If any part or parts, section, subsection, sentence, clause or phrase of this act or the application thereof to any person or circumstance is for any reason declared unconstitutional, such decisions shall not affect the validity of the remaining portions of this act which shall remain in force as if such act had been passed with the unconstitutional part or parts, section, subsection, sentence, clause, phrase or such application thereof eliminated; and the General Assembly hereby declares that it would have passed this act if such unconstitutional part or parts, section, subsection, sentence, clause or phrase had not been included herein, or if such application had not been made.

4. *Effective Clause.*—This Act shall become effective on the date that the 24th Amendment to the Constitution of the United States is ratified pursuant to Article V of the Constitution of the United States and the provisions of Senate Joint Resolution 29 of the Eighty-Seventh Congress of the United States of America at the second session, which Resolution passed the Senate on March 27, 1962, and passed the House of Representatives on August 27, 1962, or such Act shall become effective ninety days after the adjournment of the session of the General Assembly at which it is enacted, whichever shall occur later.

CHAPTER 3

An Act to amend and reenact § 33-3 of the Code of Virginia relating to the chairman of the State Highway Commission.

[H 3]

Approved November 21, 1963

Be it enacted by the General Assembly of Virginia:

1. That § 33-3 of the Code of Virginia be amended and reenacted as follows:

§ 33-3. The chairman, whose official title shall be State Highway Commissioner, and who may, at the time of his appointment, be a nonresident of Virginia, shall be a practical business man and shall be appointed at large. The State Highway Commissioner, hereinafter in this title sometimes called "the Commissioner", shall devote his entire time and attention to his duties and shall receive such compensation as shall be fixed by the Governor, subject to the approval of the Commission, unless such salary be fixed by the General Assembly in the appropriation act. He shall also be reimbursed for his actual traveling expenses while engaged in the discharge of his duties.

In the event of a vacancy due to the death, *retirement, resignation or removal* of the State Highway Commissioner, the Governor may appoint an "Acting State Highway Commissioner", until such time as the vacancy may be filled as provided in § 33-1 of the Code of Virginia. Such "Acting State Highway Commissioner" shall have all powers, and perform all duties, of the State Highway Commissioner as provided by law, and shall receive such compensation as may be fixed by the Governor. *All acts performed by the Deputy State Highway Commissioner between the time of any such vacancy and the effective date of the appointment of an "Acting State Highway Commissioner" or the State Highway Commissioner appointed to fill such vacancy are hereby validated.*

Nothing herein contained shall be construed so as to authorize or empower such "Acting State Highway Commissioner" to serve as a member of the Elizabeth River Tunnel Commission.

2. An emergency exists, and this Act is effective upon passage.

I, George R. Rich, Clerk of the House of Delegates and Keeper of the Rolls of the State, do certify that the session of the General Assembly of the Commonwealth of Virginia, at which the Acts of Assembly herein printed were enacted, adjourned sine die on November twentieth, nineteen hundred sixty-three.

GEORGE R. RICH,
*Clerk of the House of Delegates
and Keeper of the Rolls of the State*

[fol. 15]

ATTACHMENT TO COMPLAINT

S.J. Res. 29.

Eighty-seventh Congress of the United States of America

AT THE SECOND SESSION

*Begin and held at the City of Washington on
Wednesday, the tenth day of January,
one thousand nine hundred and sixty-two*

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to the qualifications of electors.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the following article is hereby proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution only if ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"SECTION 1. The right of citizens of the United States to vote in any primary or other election for President or Vice

President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

"Sec. 2: The Congress shall have power to enforce this article by appropriate legislation."

JOHN W. McCORMACK,
Speaker of the House of Representatives.

CARL HAYDEN,
President of the Senate pro tempore.

I certify that this Joint Resolution originated in the Senate.

FELTON M. JOHNSTON,
Secretary.

[Passed Senate March 27, 1962; passed House August 27, 1962; received by the Office of the Federal Register, NARS, General Services Administration, August 29, 1962]

[fol. 16] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA, AT RICHMOND

Civil Action No. 3898

HORACE E. HENDERSON, McLean, Virginia, Plaintiff,

v.

A. M. HARMAN, JR., Pulaski, Virginia; LEVIN NOCK DAVIS, Richmond, Virginia; HARRY VAUGHAN, Hopewell, Virginia, Members of the State Board of Elections; and L. M. COYNER, Fairfax Courthouse, Virginia, Director of Finance of Fairfax County, Defendants.

COMPLAINT—Filed February 20, 1964.

Plaintiff would show unto the Court that:

I.

This action arises under the Constitution and laws of the United States, to wit: U. S. Constitution Article I section 2;

Amendment XIV; Amendment XVII; and Amendment XXIV; Title 28, U. S. Code, Section 1331; Title 28, U. S. Code, Section 1343; Title 42, U. S. Code, Section 1983 and Title 42, U. S. Code, Section 1988, as hereinafter more fully appears.

II.

A. Plaintiff not only sues for himself but also on behalf of all other voters similarly situated in the Commonwealth of Virginia, by way of class action under Rule 22 of the Rules of Civil Procedure.

[fol. 17] B. Plaintiff seeks not only injunctive relief, but also alleges an actual controversy exists within the jurisdiction of this court and seeks a declaratory judgment of his rights under Title 28, U. S. Code, Section 2201, and Rule 57 of the Rules of Civil Procedure.

III.

He is Chairman of the Republican party of Virginia and is a citizen and resident of Fairfax County, Virginia, and has been a registered voter in said County for more than three years. He has paid his State capitation tax for the year 1963 and for more than three years prior to 1963. As such, he has an interest in the result of all elections, primary or otherwise, for United States Senator from Virginia, member of the United States House of Representatives from his Congressional District, and for electors for President and Vice-President of the United States.

Defendants Harman, Davis and Vaughan are the members of the State Board of Elections which is charged by Virginia law with administration and supervision of the exercise of the privilege of franchise in the Commonwealth.

Defendant L. M. Coyner is the Director of Finance of Fairfax County, Virginia. Plaintiff is advised and so alleges that said defendant Coyner has been accepting for filing certificates of continuing residence under the Acts of Assembly passed in Special Session which are hereinafter cited.

IV.

Amendment XXIV to the Constitution of the United States bans the payment of a poll or any other tax as a prerequisite for voting in federal elections as therein defined. Said amendment became effective in January, 1964.

[fol. 18] On November 21, 1963, there were approved as enacted by the General Assembly of Virginia, at special session, to be effective February 18, 1964, certain acts affecting the privilege of franchise in Virginia which are here referred to briefly as follows:

- (a) Acts, 1963 Special Session, Chapter 1. (Applicable only to calendar year 1964 only.)
- (b) Acts, 1963 Special Session, Chapter 2. (Applicable to 1964 and subsequent elections.)

A copy of said Acts of Assembly is filed herewith and prayed to be read as a part hereof, as is a copy of Amendment XXIV to the U. S. Constitution.*

V.

In brief, said Acts of Assembly require from all persons desiring to vote in Federal elections without the payment of a poll tax as allowed by said Amendment XXIV, the filing of forms as to residence with their local treasurer, and performing certain other acts, none of which is required if poll tax is paid.

The registrar under said Acts of Assembly is required to keep separate registration books, one known as Roll of Persons Registered for All Elections, the other known as Roll of Persons Registered for Federal Elections only.

VI.

Plaintiff alleges that said Acts of Assembly establish qualifications for voters in Federal elections, as defined in said Amendment XXIV, different from qualifications requi-

* Said Acts and Amendment are printed as attachments to the Complaint in Forssenius v. Harman, No. 3897, and are not reprinted here.

site for electors for the House of Delegates of Virginia, which is in violation of Article I, Section 2; Amendment XIV; and Amendment XVII of the U. S. Constitution, and an attempted evasion of said Amendment XXIV.

[fol. 19] Plaintiff alleges that defendants under color of said Acts of Assembly cause him to be subjected to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States, and deprive him of the equal protection of the laws.

Plaintiff alleges that all requirements of the Constitution and laws of Virginia requiring the payment of a poll tax as a prerequisite to voting in an election for the most numerous branch of the General Assembly of Virginia are void as repugnant to said Article I, Section 2, Amendment XVII, and Amendment XXIV, of the Constitution of the United States.

In Consideration Whereof, plaintiff prays:

- (1) That a district court of three judges be convened.
- (2) That said Acts of Assembly, and each part thereof, be declared null and void, and of no force or effect whatsoever as being repugnant to the Constitution of the United States.
- (3) That the defendants, and each of them, their agents and servants be restrained and enjoined by the order of this court, pending the final determination of issues stated herein, and upon such determination be permanently restrained and enjoined, from enforcing, executing or administering the said Acts of Assembly, or doing any act thereunder, including but not exclusively, receiving any result of elections or issuing Certificates of Election, for any Federal election, conducted in whole or in part, under color of said Acts of Assembly.
- (4) For general relief and his costs.

H. E. Widener, Jr., Bristol, Virginia; David H. Frackelton, Bristol, Virginia; L. S. Parsons, Jr., [fol. 20] Norfolk, Virginia; J. L. Dillow, Pearisburg, Virginia; John N. Dalton, Radford, Virginia; Bentley Hite, Christiansburg, Virginia, Attorneys for Plaintiff.

[fol. 38] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSENUS

v.

A. M. HARMAN, Jr., et als.

Civil Action No. 3898

HORACE E. HENDERSON

v.

A. M. HARMAN, Jr., et als.

PRE-TRIAL ORDER—March 4, 1964

It is Adjudged and Ordered:

1. These actions are consolidated.
2. The defendants are directed to file their answers, together with such additional pleadings as they may deem proper, on or before March 23, 1964. The filing of answers shall not constitute a waiver of defenses and objections raised by motions.
3. The plaintiffs may file replies, if they deem it advisable, on or before March 30, 1964.
4. No additional motions or pleadings may be filed thereafter except by leave of Court for good cause shown.
5. All proposed exhibits and the names and addresses of all persons who may be called to testify must be filed

[fol. 39] with the Clerk of this Court (in Richmond) twenty days prior to the date of the hearing on the merits. If the exhibits are voluminous, they should be marked by the Clerk at least two days prior to the date of trial. Formal proof of exhibits will be deemed waived unless objected to in writing at least seven days prior to the date of trial. Copies of all exhibits, lists of witnesses and briefs should be mailed to all counsel of record and the members of the Three-Judge Court at their respective addresses.

6. Hearing on all motions, unless otherwise ordered by the Court, will be deferred until the date of the hearing on the merits.

7. Plaintiffs' briefs should be filed on or before April 13, 1964. Defendants' briefs should be filed on or before April 28, 1964. Plaintiffs' reply briefs, if any, should be filed on or before May 5, 1964.

8. This case is set for hearing upon the merits and upon all motions in the United States District Court, Post Office Building, Richmond, Virginia, on Tuesday, May 12, 1964, at 10:00 a.m., Eastern Standard Time.

Let the Clerk send copies of this order to plaintiffs' counsel, the defendants, the Attorney General of Virginia, the Commonwealth Attorney of Fairfax County, Virginia, and the Commonwealth Attorney of Roanoke County, Virginia.

John D. Butzner, Jr., United States District Judge.
March 4, 1964

[fol. 40] Clerk's Return (omitted in printing).

[fol. 48] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSSENIEUS

v.

A. M. HARMAN, JR., et als.

ANSWER OF JAMES E. PETERS—Filed March 20, 1964

The answer of James E. Peters, Treasurer of Roanoke County, Virginia, to an action filed against him and others in the above styled cause:

This defendant, James E. Peters, Treasurer of Roanoke County, Virginia, comes and says that he adopts as his defensive pleadings, all present and future pleadings filed and to be filed by the Attorney General of the Commonwealth of Virginia, for and on behalf of the Board of Elections of said Commonwealth of Virginia.

And having thus fully answered, he prays to be hence dismissed.

James E. Peters, Treasurer of Roanoke County,
Virginia, By Edw. H. Richardson, Counsel.

Edw. H. Richardson, Counsel, Salem, Virginia.

Certificate of service (omitted in printing).

[fol. 49] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3897

LARS FORSSENIEU^S, Plaintiff,

v.

A. M. HARMAN, JR., et als., Defendants.

MOTION TO STAY PROCEEDINGS—Filed March 23, 1964

Defendants, A. M. Harman, Jr., Levin Nock Davis, and Harry Vaughan, move the Court as follows:

(1) To stay any decision on the merits on the ground that the Complaint seeks a declaration that certain Virginia Statutes are repugnant to the Constitution of the United States and an injunction against enforcement of such Virginia Statutes, prior to any interpretation, construction or determination of constitutionality of such Statutes by the Virginia Courts.

(2) To stay any decision on the merits on the ground that appropriate and effective remedies, such as the declaratory judgment procedure, are provided by Virginia law for the determination by its Courts of the issues raised by the Complaint, and such Courts should be afforded a reasonable opportunity to make such determination.

(3) To stay any decision on the merits on the ground that, in the area of qualifications for voting which has traditionally been reserved to the States, Federal Courts should serve the policy of comity with the States in order to avoid unnecessary interference by the Federal Courts with proper and validly administered State concerns and [fol. 50] unnecessary constitutional adjudications by the Federal Courts.

(4) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint are fairly open to construction or interpretation by the Virginia Courts, which might materially change the nature of the issues presented by the Complaint.

(5) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint, if construed in conjunction with Sections 18 through 38 of the Constitution of Virginia, require determinations by the Virginia Courts that will furnish a guide for future action by this Court.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia;

Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219;

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

[fol. 51] Certificate of Service (omitted in printing).

[fol. 52] In support of this Motion, the Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, intend to rely upon the following authorities:

Texts:

1 *Barron & Holtzoff, Federal Practice & Procedure*, § 64 (1960), and cases cited.

1 *A Moore's Federal Practice*, ¶ 0.203[1] (2d ed. 1961), and cases cited.

Cases:

Railroad Comm'n v. Pullman Co., 312 U.S. 496 (1941);
Spector Motor Co. v. McLaughlin, 323 U.S. 101 (1944);
Stainback v. Mo Hock Ke Lok Po, 336 U.S. 368 (1949);
Government & Civic Employees Organizing Comm. v. Windsor, 353 U.S. 364 (1957);
Harrison v. NAACP, 360 U.S. 167 (1959);
Louisiana Power & Light Co. v. Thibodeaux, 360 U.S. 25 (1959);
Martin v. Creasy, 360 U.S. 219 (1959);
Compare *McNeese v. Board of Educ.*, 373 U.S. 668 (1963);
Empire Pictures Distrib. Co. v. City of Fort Worth, 273 F.2d 529 (5th Cir. 1960);
Lassiter v. Taylor, 152 F. Supp. 295 (E.D. N.C. 1957).

[fol. 53] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Richmond
Civil Action No. 3898

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, Jr., et als., Defendants.

MOTION TO STAY PROCEEDINGS—Filed March 23, 1964
Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, move the Court as follows:

(1) To stay any decision on the merits on the ground that the Complaint seeks a declaration that certain Virginia Statutes are repugnant to the Constitution of the United States and an injunction against enforcement of such Virginia Statutes, prior to any interpretation, construction or determination of constitutionality of such Statutes by the Virginia Courts.

(2) To stay any decision on the merits on the ground that appropriate and effective remedies, such as the declaratory judgment procedure, are provided by Virginia law for the determination by its Courts of the issues raised by the Complaint, and such Courts should be afforded a reasonable opportunity to make such determination.

(3) To stay any decision on the merits on the ground that, in the area of qualifications for voting which has traditionally been reserved to the States, Federal Courts should serve the policy of comity with the States in order to avoid unnecessary interference by the Federal Courts [fol. 54] with proper and validly administered State concerns and unnecessary constitutional adjudications by the Federal Courts.

(4) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint are fairly open to construction or interpretation by the Virginia Courts, which might materially change the nature of the issues presented by the Complaint.

(5) To stay any decision on the merits on the ground that the Acts of Assembly referred to in the Complaint, if construed in conjunction with Sections 18 through 38 of the Constitution of Virginia, require determinations by the Virginia Courts that will furnish a guide for future action by this Court.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia;

Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219;

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

[fol. 55] Certificate of Service (omitted in printing).

[fol. 56] In support of this Motion, the Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, intend to rely upon the following authorities:

Texts:

- 1 *Barron & Holtzoff, Federal Practice & Procedure*, § 64 (1960), and cases cited.
- 1 *A Moore's Federal Practice*, ¶ 0.203[1] (2d ed. 1961), and cases cited.

Cases:

- Railroad Comm'n v. Pullman Co.*, 312 U.S. 496 (1941);
Spector Motor Co. v. McLaughlin, 323 U.S. 101 (1944);
Stainback v. Mo. Hock Ke Lok Po, 336 U.S. 368 (1949);
Government & Civic Employees Organizing Comm. v. Windsor, 353 U.S. 364 (1957);
Harrison v. NAACP, 360 U.S. 167 (1959);
Louisiana Power & Light Co. v. Thibodeaux, 360 U.S. 25 (1959);
Martin v. Creasy, 360 U.S. 219 (1959);
Compare *McNeese v. Board of Educ.*, 373 U.S. 668 (1963);
Empire Pictures Distrib. Co. v. City of Fort Worth, 273 F.2d 529 (5th Cir. 1960);
Lassiter v. Taylor, 152 F. Supp. 295 (E.D. N.C. 1957).

[fol. 57] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Richmond
Civil Action No. 3897

LARS FORSENIEUS, Plaintiff,

v.

A. M. HARMAN, Jr., et als., Defendants.

MOTION TO DISMISS—Filed March 23, 1964.

Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, move the Court as follows:

(1) To dismiss the action on the ground that the Electoral Board of Roanoke County, Virginia, the Clerk of the Circuit Court of Roanoke County, Virginia, and the Registrars of Roanoke County, Virginia, are charged by the Constitution and laws of Virginia with the duties of administering the registration of voters and conducting elections, and therefore, are indispensable parties not within the jurisdiction of this Court and without whom the relief prayed for in the Complaint cannot be granted.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia;

Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court—State Library Building, Richmond, Virginia 23219.

[fol. 58] Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

Certificate of Service (omitted in printing).

[fol: 58a] In support of this Motion, the defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, intend to rely upon the following authorities:

Constitutional Provisions:

Constitution of Virginia, Sections 20, 31 and 38.

Statutory Provisions:

Title 24 of the Code of Virginia, 1950, as amended by the Acts of the 1963 Extra Session of the General Assembly of Virginia, Chapters 4, 5, 6 and 7.

Federal Rules of Civil Procedure:

Rule 12.

Cases:

Jeffers v. Whitley, 165 F. Supp. 951 (N.D. N.C. 1958).
Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

[fol. 59] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Richmond
Civil Action No. 3898

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET ALs., Defendants.

MOTION TO DISMISS—Filed March 23, 1964

Defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, move the Court as follows:

(1) To dismiss the action because the Complaint fails to state a claim against defendants upon which relief can be granted in that it appears upon the face of the Complaint that the plaintiff is duly registered and entitled to vote in all State and Federal elections to be held in Virginia, and that, therefore, the Virginia Statutes referred to in the Complaint do not affect the plaintiff adversely in any manner or threaten him with immediate harm.

(2) To dismiss the action on the ground that the Court lacks jurisdiction because the Complaint presents no actual or justiciable case or controversy within the meaning of 28 U.S.C. § 2201 insofar as the plaintiff and other persons similarly situated are concerned.

(3) To dismiss the action on the ground that the Electoral Board of Fairfax County, Virginia, the Clerk of the Circuit Court of Fairfax County, Virginia, and the General Registrar of Fairfax County, Virginia, are charged by [fol. 60] the Constitution and laws of Virginia with the duties of administering the registration of voters and conducting elections, and therefore, are indispensable parties not within the jurisdiction of this Court and without whom the relief prayed for in the Complaint cannot be granted.

This Motion is based upon the pleadings and exhibits on file in this action and the authorities attached hereto.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia, Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219.

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

Certificate of Service (omitted in printing).

[fol. 62]. In support of this Motion, the defendants, A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, intend to rely upon the following authorities:

Constitutional Provisions:

Constitution of the United States, Article III, § 2.

Constitution of Virginia, Sections 20, 31 and 38.

Statutory Provisions:

28 U.S.C., § 2201 (1958).

Title 24 of the Code of Virginia, 1950, as amended by the
Acts of the 1963 Extra Session of the General Assembly of Virginia, Chapters 4, 5, 6 and 7.

Federal Rules of Civil Procedure:

Rule 12

Rule 57

Texts:

6 *Moore's Federal Practice*, ¶ 57.11 (2d ed. 1953), and cases cited.

3 *Barron & Holtzoff, Federal Practice & Procedure*, §§ 1263-64 (1958), and cases cited.

Cases:

Poe v. Ullman, 367 U.S. 497 (1961).

Alabama State Fed'n. of Labor v. McAdory, 325 U.S. 450 (1945).

Ashwander v. Tennessee Valley Authority, 297 U.S. 288 (1936).

Tyler v. Judges of Court of Registration, 179 U.S. 405 (1900).

Marye v. Parsons, 114 U.S. 325 (1885).

Bryant v. Rucker, 111 F.Supp. 309 (S.D. Ala. 1953).

Jeffers v. Whitley, 165 F.Supp. 951 (M.D. N.C. 1958).

Covington v. Edwards, 264 F.2d 780 (4th Cir. 1959).

[fol. 63] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Richmond
Civil Action No. 3897

LARS FORSSENIEUS, Plaintiff,

v.

A. M. HARMAN, JR., ET AL., Defendants.

ANSWER OF THE DEFENDANTS, A. M. HARMAN, JR., LEVIN
NOCK DAVIS and HARRY VAUGHAN—Filed March 23, 1964

First Defense

The Complaint fails to state a claim against Defendants
upon which relief can be granted.

Second Defense

(1) The defendants admit that this Court has jurisdiction under 18 U.S.C. §1343, but deny that this action arises under the particular articles, amendments or sections of the Constitution and laws of the United States cited in paragraph I.

(2) The defendants deny the averments of paragraph II A.

(3) The defendants deny that an actual controversy exists or the plaintiff is entitled to a declaratory judgment or an injunction under 28 U.S.C. §2201 and Rule 57 of the Rules of Civil Procedure as averred in paragraph II B. Further, the defendants aver that the remainder of paragraph II B does not require an answer.

(4) The defendants are without information sufficient to form a belief as to the truth of the averments in the first unnumbered subparagraph in paragraph III.

[fol. 64] (5) The defendants aver that Amendment XXIV of the Constitution of the United States speaks for itself, and therefore the first averment of the second unnumbered subparagraph in paragraph III does not require an answer; the defendants deny the remaining averments in such subparagraph.

(6) The defendants deny the averments and conclusions in the third unnumbered subparagraph in paragraph III.

(7) The defendants deny the averments in the fourth unnumbered subparagraph of paragraph III.

(8) The defendants admit the averments in the fifth unnumbered subparagraph in paragraph III.

(9) The defendants aver that Amendment XXIV to the Constitution of the United States and the Acts of Assembly speak for themselves and therefore the averments of paragraph IV do not require an answer.

(10) The defendants aver that the Acts of Assembly speak for themselves and therefore the averments of paragraph V do not require an answer.

(11) The defendants deny the averments of paragraph VI.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

[fol. 65] Robert Y. Button, Attorney General of Virginia, Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219.

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212, Of Counsel.

Certificate of Service (omitted in printing).

[File endorsement omitted]

[fol. 66]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Action No. 3898

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET ALs., Defendants.

ANSWER OF THE DEFENDANTS, A. M. HARMAN, JR., LEVIN
NOCK DAVIS and HARRY VAUGHAN—Filed March 23, 1964.

First Defense

The Complaint fails to state a claim against Defendants
upon which relief can be granted.

Second Defense

(1) The defendants admit that this Court has jurisdiction under 18 U.S.C. §1343, but deny that this action arises under the particular articles, amendments or sections of the Constitution and laws of the United States cited in paragraph I.

(2) The defendants deny the averments of paragraph II A.

(3) The defendants deny that an actual controversy exists or the plaintiff is entitled to a declaratory judgment or an injunction under 28 U.S.C. §2201 and Rule 57 of the Rules of Civil Procedure as averred in paragraph II B. Further, the defendants aver that the remainder of paragraph II B does not require an answer.

(4) The defendants are without information sufficient to form a belief as to the truth of the averments in the first [fol.67] unnumbered subparagraph in paragraph III.

(5) The defendants deny the averments in the second unnumbered subparagraph of paragraph III.

(6) The defendants admit the averments in the third unnumbered subparagraph in paragraph III.

(7) The defendants aver that Amendment XXIV to the Constitution of the United States and the Acts of Assembly speak for themselves and therefore the averments of paragraph IV do not require an answer.

(8) The defendants aver that the Acts of Assembly speak for themselves and therefore the averments of paragraph V do not require an answer.

(9) The defendants deny the averments of paragraph VI.

A. M. Harman, Jr., Levin Nock Davis and Harry Vaughan, By Richard N. Harris, Joseph C. Carter, Jr., Counsel.

Robert Y. Button, Attorney General of Virginia, Richard N. Harris, Assistant Attorney General of Virginia, Supreme Court-State Library Building, Richmond, Virginia 23219.

Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212.

[fol. 68] Certificate of Service (omitted in printing).

[fol. 69]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk and Richmond Divisions

Civil Action No. 4460

Civil Action No. 3897

Civil Action No. 3898

(as consolidated) Richmond Division

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET ALS., Defendants.

ANSWER—Filed March 23, 1964.

The answer of Lewis M. Coyner, Director of Finance of Fairfax County, Virginia to an action filed against him and others in the above styled cause:

This Defendant, Lewis M. Coyner, Director of Finance of Fairfax County, Virginia, comes and says that he adopts as his defense pleadings all present and future pleadings filed and to be filed by the Attorney General of the Commonwealth of Virginia for and on behalf of the Board of Elections of the said Commonwealth of Virginia.

And having thus fully answered, he prays to be thus dismissed with costs to Plaintiff.

Lewis M. Coyner, Director of Finance, Fairfax County, Virginia, By Ralph G. Louk, Counsel.

Ralph G. Louk, Commonwealth's Attorney, Fairfax County, Virginia, Counsel for Defendant.

Certificate of Service (omitted in printing).

[fol. 70]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

At Richmond

Civil Actions Nos. 3897 and 3898

LARS FORSSENIEUS, Plaintiff,

v.

A. M. HARMAN, JR., ET AL., Defendants,
and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., ET AL., Defendants.

STIPULATION—Filed May 12, 1964

Come the plaintiffs and defendants, by counsel, and stipulate the following facts:

I.

Lars Forssenius is a duly registered voter in Burlington Precinct, Roanoke County, Virginia, having been registered February 8, 1963.

He is registered on the registration books for all elections, and is not registered on the registration books for federal elections only.

II.

Forssenius has not paid his poll tax for 1963.

[fol. 71]

III.

Forssenius has not filed a certificate of continuing residence.

IV.

Forssénius is a Vice-Chairman of the Young Republican Federation of Virginia.

V.

Horace E. Henderson is the Chairman of the Republican State Central Committee.

VI.

Henderson is now and has been for more than one year previous to the commencement of this suit a duly registered voter in Fairfax County, Virginia.

He is registered on the registration books for all elections and is not registered on the registration books for federal elections only.

VII.

Henderson has paid his poll taxes for 1961, 1962 and 1963.

VIII.

Henderson has not filed a certificate of continuing residence.

This 12 day of May, 1964.

H. E. Widener, Jr., Of Counsel for Plaintiffs,
Richard N. Harris, Of Counsel for Defendants.

[fol. 72] [File endorsement omitted]

[Handwritten notation—I Concur—Walter E. Hoffman,
U.S.D.J.—John D. Butzner, Jr., U.S.D.J.]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
AT RICHMOND

Civil Actions Nos. 3897 and 3898

LARS FORSENIEUS, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants,
and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants.

(Argued May 12, 1964)

OPINION—May 29, 1964

Before Bryan, Circuit Judge, and Hoffman and Butzner,
District Judges.

H. E. Widener, Jr., Esquire, Bristol, Virginia; David H. Frackelton, Esquire, Bristol, Virginia; L. S. Parsons, Jr., Esquire, Norfolk, Virginia; J. L. Dillow, Esquire, Pearisburg, Virginia; John N. Dalton, Esquire, Radford, Virginia; Bentley Hite, Esquire, Christiansburg, Virginia, attorneys for the plaintiffs.

Robert Y. Button, Esquire, Attorney General of Virginia; Richard N. Harris, Esquire, Assistant Attorney General of Virginia; E. Milton Farley, III, Esquire, Richmond, Virginia; Joseph C. Carter, Jr., Esquire, Richmond, Virginia; Edward H. Richardson, Esquire, Commonwealth's Attorney of Roanoke County, Salem, Virginia; Ralph G.

Louck, Esquire, Commonwealth's Attorney of Fairfax County, Fairfax, Virginia, attorneys for the defendants.

[fol. 73] Albert V. Bryan, Circuit Judge:

Since the adoption of the 24th Amendment forbidding exactation of a poll tax as a prerequisite to voting in a Federal election,* Virginia has enacted an additional qualification for the Federal voter. If he has not paid the poll tax still required in State elections, he must file within the same time a certificate of continuing residence. No such certificate is demanded of a voter in an election for the Virginia House of Delegates. By Article I, Section 2 and by the 17th Amendment of the United States Constitution, it is ordained that electors choosing a Representative or Senator in Congress "shall have the qualifications requisite for electors of the most numerous branch [the House of Delegates] of the State Legislature(s)". Thus, the Virginia statutes—1963 Acts—imposing the extra test upon the Federal elector contravenes, as this suit now asserts, these constitutional provisions.

The plaintiffs further assert that the ultimate effect of the 24th Amendment is to rescind the power of the State to insist upon the payment of a poll tax as a condition for voting in the election of members of the House of Delegates. We do not agree.

These propositions were posed by the two complaints here, one of Lars Forssenius and the other of Horace E. Henderson, both citizens of the United States and of the State of Virginia having the requisite residence to vote, and each suing for himself and others as a class similarly [fol. 74] situated. The suits have been consolidated and are now treated as a single cause.

The 1963 Acts were adopted at an extra session of the Virginia Legislature in anticipation of the promulgation of the 24th Amendment, which occurred February 4, 1964. Prior thereto, the Constitution of Virginia, in Article II,

* An election for a State or local office we shall term a State election and a voter therein a State elector; an election for a Federal office will be a Federal election, and a voter therein a Federal elector.

and the statutes of the State, Code §§ 24-67 and 24-17, provided for the registration and voting of electors in all elections, both Federal and State, primary and general. In brief, the requirements were: age of not less than 21 years, residence within the State for one year and of the city or county six months and the payment "at least six months prior to the election . . . to the proper official all State poll taxes [\$1.50 annually] assessed or assessable against him for three years next preceding such election". Registration is required only once. Each election year, however, there is compiled a new list of poll taxes paid.

Amendment 24, so far as pertinent, provides in § 1:

" . . . The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax".

Obviously, the effect of this amendment was to annul in Virginia's Constitution and statutes payment of a poll tax as a condition for registering and voting in primary and general Federal elections. *Guinn v. United States*, 238 U.S. 347, 362 (1915); *Ex parte Yarbrough*, 110 U.S. 651, 655 (1884).

The 1963 Acts directed a division of the registration and voting qualification record into two classes, one for Federal elections and another for State elections. For this purpose Code § 24-67 providing for registration, and § 24-17 for voting, were each amended and enlarged. No change [fol. 75] was made with regard to State elections. The changes inserted for participation in Federal elections were twofold: (1) the withdrawal of the poll tax payment both for registration and for voting, and (2) the addition for voting of this requirement in Code § 24-17.2, set out in part below:

"Proof of residence required; how furnished.—

(a) No person shall be deemed to have the qualifications of residence required . . . [by the Constitution

and statutes of Virginia] in any calendar year subsequent to that in which he registered . . . and [he] shall not be entitled to vote in this State [in any Federal election] . . . unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by . . . [payment of the customary poll taxes]. Proof of continuing residence may only be established by either of such two methods.

"(b) Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

'I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of (city or county), residing at (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

or

Subscribed and sworn to before me this day of
....., 19....

Notary Public'

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his [fol. 76] affidavit or witnessed by at least one adult.

"(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253."

As a result of the new statutes a citizen after registration may vote in both Federal and State elections if he has satisfied the assessable poll tax; if he has not paid the tax he cannot vote in any State election but he may vote in a Federal election upon filing the certificate of residence.

I. The pivotal point before us is whether or not the certificate of residence is simply an instrument evidencing residence, that is, merely proof of the residence qualification; or a separate qualification put upon the Federal voter, or at least an enlargement of the residence qualification, which in either event is not placed on the State voter. Concededly, residence is a qualification properly required for both Federal and State suffrage. *Lassiter v. Northampton Election Bd.*, 360 U.S. 45, 51 (1959).

In this determination, we reject the abstention argument pressed by the defendants: that the significance of the certificate and its character as used in the 1963 Acts is a State question, and we should stay our hand until the courts of Virginia are afforded the opportunity to interpret the term. Whether a requirement of State law constitutes a discrimination against the Federal voter, either by a separate or a disproportionate qualification, within the meaning of Article I, Section 2 and the 17th Amendment of the Federal Constitution is immediately a Federal question. No matter the careful and scrupulous study of the State courts, the determination is one manifestly within the framework of the Federal Constitution and so must be the decision of the Federal court. In *Ex parte Yarbrough*, [fol. 77] *supra*, 110 U.S. 651, 663 the Court said:

"But it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States.

• • • • •

"The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures,

do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the *same* persons shall vote for members of Congress in that State". (Accent added.)

Because of the 1963 Acts, with the poll tax removed from Federal elections, the electors in the two elections do not enjoy equal eligibility. The Federal elector must file a witnessed or notarized certificate of residence, not only declaring himself a current resident of Virginia, but also that he has been a resident since his registration. After giving the street number of his residence, he must give assurance of his intention not to remove from the city or county prior to the next general election.

On the other hand, remittance of the poll tax by the State elector need not be accompanied by any express representation whatsoever of present residence. No affirmative proof has to be adduced that it has continued uninterrupted since his original registration. Thus the State elector's residency is accepted as unbroken from the date of his registration. No such presumption is accorded the Federal voter. A positive and yearly renewed guarantee of residence is necessary for casting a Federal vote. True, a State elector may be challenged at the polls for insufficient residence, but this is a rare and optional practice.

These differences, while denied by the defendants, are urged as a distinction only in the means of proof of residence [fol. 78] and are said not to be a variance in qualifications. The argument is that the poll tax payment requires all that the certificate requires. This view cannot stand against the obvious fact that the payment of the poll tax does not entail a procedure which is trustworthy in vouching residence. That the tax payment will be accepted in satisfaction of residential requirements even in a Federal election, despite its almost total deficiency as evidence of residence, reveals the certificate as an independent or superadded qualification.

We think the 1963 Acts do add a distinct qualification. The excess of exactions in themselves constitute a special qualification. But whether the 1963 Acts delineate another qualification or merely increase the quantum of necessary proof of residence, they unreasonably burden the duty of the Federal elector beyond that of the voter for the House of Delegates. This overburden, if not itself a separate qualification, is an increased qualification. The extra obligation offends the Federal Constitution by tasking the voter in an election for President, Vice President and Congress beyond what is asked of the elector in the choice of members of the House of Delegates. Art. I., § 2 and 17th Amendment.

Contra, we are cited to *Southerland v. Norris*, 74 Md. 326, 22 Atl. 137 (1891), and *Pope v. Williams*, 56 Atl. 543, (Md. 1903), *aff'd*, 193 U.S. 621 (1904). These cases sustained Maryland statutes treating with removal of persons from the State, their return and the entry of new residents. They sought proof of resumption or inception of residence. But after the voter became qualified generally, neither case is authority for saddling a voter in a Federal election, in order to maintain his status, with a step or task beyond that required of a voter in a State election.

II. For non-joinder of indispensable parties the defendants move the dismissal of this action. The argument is [fol. 79] that as the local electoral board, the registrars and clerks of court are the officers charged with the responsibility for the conduct of elections, no such declaratory or injunctive decree as prayed in the complaint would be effective in the absence of these officers. Only the State Board of Elections and the appropriate treasurer are named defendants. The proposition is unsound.

Poll taxes are paid to, and certificates of residence are filed with, the treasurer. He certifies to the election officials the lists of poll taxes paid and certificates filed. The Board prescribes and furnishes the certificates. Without the acts of these officers no election could proceed. They are sufficient parties for the aims of this suit.

III. Plaintiffs construe the 24th Amendment as erasing payment of poll taxes as a prerequisite to voting for mem-

bers of the Virginia House of Delegates. We do not follow the reasoning of the plaintiffs to this end, and certainly do not subscribe to the conclusion. The legislative history of the joint resolution of the Congress eventuating in the 24th Amendment reveals beyond peradventure that the Amendment was not intended to outlaw poll taxes in any election other than a primary or general Federal election. House Report No. 1821, June 13, 1962, U.S. Code Cong. & Ad. News 4033, 4037, 87th Cong., 2d Sess. (1962). The very phraseology of the Amendment precludes any other interpretation. If the Congress had intended to illegalize the poll tax in all elections, it would have so declared in the 24th Amendment, as it did in the 15th and 19th, where comprehension of all elections was accomplished quite simply by omission of any designation of the elections affected. For the 24th Amendment an explicit designation was included as a limitation of its force to those elections named. [fol. 80] Furthermore, the poll tax as a condition to the exercise of the franchise in State elections has been constantly upheld. *Breedlove v. Suttles*, 302 U.S. 277 (1937); *Saunders v. Wilkins*, 152 F.2d 235, 237 (4 Cir. 1945), *cert. denied*, 328 U.S. 870 (1946); *Butler v. Thompson*, 97 F.Supp. 17 (E.D.Va. 1951), *aff'd per curiam*, 341 U.S. 937. Indeed, the very fact that the Congress deemed a constitutional amendment necessary to abolish it in Federal elections demonstrates that such a tax is not in itself unconstitutional.

IV. That the Constitution of the United States requires the restraint upon the State which we now enforce, and the reason for it, are declared in that great commentary, the *Federalist*, No. 52, in this way:

“... I shall begin with the House of Representatives.

“The first view to be taken of this part of the government relates to the qualifications of the electors and the elected.

“Those of the former are to be the same with those of the electors of the most numerous branch of the state legislatures. The definition of the right of suffrage is very justly regarded as a fundamental article

of republican government. It was incumbent on the convention therefore, to define and establish this right in the Constitution. To have left it open for the occasional regulation of the Congress, would have been improper for the reason just mentioned. To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone. . . . It must be satisfactory to every State because it is conformable to the standard already established, or which may be established by the State itself. It will be safe to the United States, because, being fixed by the State constitutions, it is not alterable by the State governments, and it cannot be feared that the people of the States will alter this part of their constitutions in such a manner as to abridge the right secured to them by the federal Constitution."

An order will be entered declaring invalid, for the reasons stated, so much of the 1963 Acts—Chapters 1 and 2, [fol. 81] approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963—as requires the filing of a certificate of continuing residence six months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, and enjoining the defendants, their agents, servants and employees from requiring compliance with this part of the Acts.

The order will be suspended, however, for 30 days to allow the defendants, if they be so advised, to appeal to the Supreme Court of the United States, but the suspension shall thereafter cease unless the Supreme Court, or one of the Justices thereof, shall in the interval enlarge the suspension. No bond shall be required of the defendants to perfect the appeal or to obtain the suspension.

[fol. 82] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Richmond
Civil Actions Nos. 3897 and 3898

LARS FORSENUS, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants,
and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants.

FINAL ORDER—May 29, 1964

Upon consideration of the pleadings, the stipulations of the parties, as well as the exhibits offered in evidence, and the argument of counsel thereon, the Court declares, for the reasons stated in its opinion this day filed, that the portions of Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of the Commonwealth of Virginia, Extra Session 1963, which require the filing of a certificate of continuing residence six (6) months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress, are invalid because in violation of the Constitution of the United States; and accordingly it is

[fol. 83] Adjudged, Ordered and Decreed that the defendants herein, their agents, servants and employees be, and each of them is hereby, restrained and enjoined from requiring compliance by an elector with the said part of the said Acts of the General Assembly.

It is further Ordered that the effectiveness and execution of the foregoing restraint and injunction be suspended for a period of 30 days from this date to allow the defendants, if they be so advised, to seek a further stay of this order from the Supreme Court, or one of the Justices thereof, during the pendency of any appeal therefrom, and this suspension is allowed without bond but shall cease upon the expiration of the said 30-day period unless it is enlarged as aforesaid upon appeal.

Albert V. Bryan, United States Circuit Judge;
Walter E. Hoffman, United States District Judge;
John D. Butzner, Jr., United States District Judge.

May 29th, 1964,

[fol. 84] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
At Richmond
Civil Actions Nos. 3897 and 3898

LARS FORSSENIUS, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants,
and

HORACE E. HENDERSON, Plaintiff,

v.

A. M. HARMAN, JR., et al., Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed June 11, 1964

I. Notice is hereby given that A. M. Harman, Jr., Member, State Board of Elections; Levin Nock Davis, Secretary and Member, State Board of Elections; Harry

Vaughan, Member, State Board of Elections; L. M. Coyner, Director of Finance of Fairfax County, Virginia; and James E. Peters, Treasurer of Roanoke County, Virginia, the defendants in the above styled consolidated cases, hereby appeal to the Supreme Court of the United States from the Final Order entered in these suits on May 29, 1964.

This appeal is taken pursuant to 28 U.S.C. § 1253.

[fol. 85] II. The Clerk will please prepare a transcript of the record in this case for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The Complaints in both cases.
2. The Pre-Trial Order entered on March 4, 1964.
3. The Motions To Stay Proceedings in both cases.
4. The Motions To Dismiss in both cases.
5. The Answers in both cases of the defendants, Harman, Davis and Vaughan.
6. The Answer of the defendant Peters in Civil Action No. 3897.
7. The Answer of the defendant Coyner in Civil Action No. 3898.
8. The Opinion of the three-judge District Court filed herein on May 29, 1964.
9. The Final Order of the three-judge District Court entered herein on May 29, 1964.
10. All of the following exhibits filed by the defendants: Exhibits Nos. 1 through 41, inclusive.
11. The Stipulation of counsel.
12. This Notice of Appeal.

III. The following questions are presented by this appeal:

1. Did the three-judge District Court err in refusing to stay the proceedings in both cases on the grounds, or any

of them, set forth in the defendants' Motions To Stay Proceedings?

[fol. 86] 2. Did the three-judge District Court err in refusing to dismiss the Complaints, or either of them, on the grounds, or any of them, set forth in the defendants' Motions To Dismiss?

3. Did the three-judge District Court err in declaring invalid because in violation of Article 1, Section 2, and the 17th Amendment of the Constitution of the United States those portions of Chapters 1 and 2, approved November 21, 1963, of the Acts of the General Assembly of Virginia, Extra Session 1963, which may require the filing of a certificate of continuing residence six (6) months before a general election as a prerequisite to the right of a person otherwise qualified to vote in a primary or general election for President or Vice President, or for Senators or Representatives in Congress?

4. Did the three-judge District Court err in restraining and enjoining the defendants from requiring compliance by an elector with those portions of the Acts of the General Assembly of Virginia, Extra Session 1963, declared to be unconstitutional?

Richard N. Harris, Assistant Attorney General;
Joseph C. Carter, Jr., Special Counsel.

Robert Y. Button, Attorney General of Virginia; Richard N. Harris, Assistant Attorney General; Supreme Court Building, Richmond, Virginia 23219;

[fol. 87] Joseph C. Carter, Jr., E. Milton Farley, III, Hunton, Williams, Gay, Powell & Gibson, 1003 Electric Building, Richmond, Virginia 23212;

Attorneys for Appellants.

Proof of Service (omitted in printing)

[fol. 91]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 1

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS

STATE CAPITOL

RICHMOND 19

December 19, 1963

IMPORTANT
READ CAREFULLY

MEMO TO MEMBERS OF ELECTORAL BOARD

Gentlemen:

The special session of the General Assembly which met on November 19, 1963, passed a number of amendments and new sections to the election laws pertaining to registration, etc. They directed this Board to have a supplement printed to the Election Laws containing all of the changes made at said session and to distribute same to the election officials throughout the State. Accordingly, you will find a copy of same enclosed for your information and guidance. A copy of the supplement has been mailed to your general registrar.

It is requested that particular notice be taken of the note on the face of the supplement. *CHAPTER I*, which pertains to the certificate of residence which a person may file with the treasurer during the calendar year 1964 in order to vote in Federal elections without the payment of the capitation tax, *becomes effective on February 19, 1964*.

CHAPTER II contains amended and new sections of the Election Laws relative to registration and voting in State, local and Federal elections, and to the duties of certain election officials. This chapter *does not become effective until the 24th Amendment to the United States Constitu-*

tion is ratified. Therefore, the registrars will continue to register applicants just as they have been doing until they receive written instructions from this office to do otherwise.

With kindest personal regards and best wishes, I am

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

LND/c
Enclosure

"Courtesy Makes Driving Safer"

[fol. 92]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 2

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 19

March 9, 1964

MEMO TO THE CLERK OF THE COURT

Dear Sir:

Due to the ratification of the 24th Amendment to the constitution of the United States, it was necessary to make several changes in the Election Laws of Virginia pertaining mainly to registration procedures.

Shortly before the changes became effective on February 19 we sent a supply of the new forms and a letter of instructions to your general registrar. Since you will probably have a number of inquiries concerning the changes,

I am enclosing herewith a copy of the letter of instructions and a set of the forms for your information. I am also enclosing a supply of the Certificate of Continuing Residence Forms for your use in supplying persons who may request them.

With best wishes, I remain

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

LND/c
Enclosures

[fol. 93]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 3

COMMONWEALTH OF VIRGINIA
(State Emblem)

STATE BOARD OF ELECTIONS
STATE CAPITOL
RICHMOND 19

December 19, 1963

MEMO TO THE TREASURERS

Gentlemen:

The special session of the General Assembly which convened on November 19, 1963, passed a number of amendments and new sections to the election laws pertaining to registration, resident certificates, etc. They directed this Board to have a supplement printed to the Election Laws containing all of the changes made at said session and to

distribute them to the election officials throughout the State. Accordingly, you will find a copy of same enclosed for your information and guidance.

It is requested that particular notice be taken of the note on the face of the supplement. *CHAPTER I*, which pertains to the certificate of residence which a person may file with you during the calendar year 1964 in order to vote in Federal elections without the payment of the capitation tax, *becomes effective on February 19, 1964*. We are in the process of preparing the certificate forms and the books to be used in recording the certificates of residence which the General Assembly directed this Board to furnish the treasurers. We hope to have them in your hands before the law becomes effective on February 19, 1964.

CHAPTER II contains amended and new sections of the Election Laws relative to registration and voting in State, local and Federal elections, and to the duties of certain election officials. This chapter *does not become effective until the 24th Amendment to the United States Constitution is ratified*.

With kindest personal regards and best wishes, I am

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

LND/c
Enclosure

[fol. 94]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 4

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
ROOM 30, STATE CAPITOL
RICHMOND 19

February 10, 1964

MEMO TO THE TREASURER

Dear Sir:

The November 1963 Special Session of the General Assembly passed Acts authorizing persons to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections without the payment of a poll tax.

In order that the requirements of the Acts could be carried out, the General Assembly directed this Board to prepare and distribute to the county and city treasurers such books as needed for use in recording the certificates of residence and under Section 24-28.1 this Board was also directed to prepare the necessary forms for the filing of certificates of residence.

Accordingly, we have prepared the material as directed and you will find enclosed a supply of the Certificate of Residence Forms and a book to be used in recording the certificates.

As set out under the new law, the certificates shall be received by the treasurer, dated and marked filed, and shall be recorded in the enclosed book alphabetically and by magisterial districts in counties and by wards or other election districts in cities. This law becomes effective on the 19th day of February, 1964, and any certificates received after that date should be processed as set out above.

60

May I call your attention to the fact that the General Assembly also amended Sections 24-120, 24-123 and added Section 24-128.1. These are sections which I am sure you will want to study since they deal with duties required of you as treasurer.

Please feel free to call on me if I can be of further assistance in this matter.

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

Enclosures

[Vol. 95]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 5

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS

STATE CAPITOL

RICHMOND 19

March 5, 1964

MEMO TO THE TREASURER

Dear Sir:

According to the letters and calls I am receiving, there seems to be still some confusion concerning the qualifications for a person to vote in FEDERAL ELECTIONS ONLY this year without the payment of the capitation tax. You will find enclosed a copy of the letter of instructions which this office issued to the registrars concerning this matter as the thought has occurred to me that this information might be of some help also to the treasurers.

In reading the letter of instructions you will observe that the whole procedure so far as the treasurers are concerned boils down to one point. During the year 1964 the only person who will be required to file the Certificate of Continuing Residence in order to vote in the 1964 Federal elections without the payment of the capitation tax will be the person who is presently registered to vote in all elections who decides not to pay the tax to vote in 1964 but who files the Certificate instead on or before May 2, 1964 with the treasurer.

Please feel free to call upon me if I can be of further assistance in the matter.

Very truly yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS
Levin Nock Davis, Secretary

Enclosure

"Courtesy Makes Driving Safer"

[fol. 96]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 6

COMMONWEALTH OF VIRGINIA

(State Emblem)

STATE BOARD OF ELECTIONS
ROOM 30, STATE CAPITOL
RICHMOND 19

February 14, 1964

MEMO TO THE GENERAL REGISTRAR

Dear Registrar:

Due to the ratification of the 24th Amendment to the Constitution of the United States, several changes have been made in the method of registering voters in Virginia.

Therefore, this letter of instructions and the forms are being sent to you as directed by the General Assembly of Virginia at its Special Session held in November 1963. You will find this directive and the changes in the law in the Supplement to the Election Laws which we furnished you in December. In studying the changes you will note there will be two methods of registering persons in the future.

FIRST—PERSONS REGISTERING TO VOTE IN ALL ELECTIONS—SECTION 24-67

A person who applies to you for registration to vote in all elections who has met the age, resident, and capitation tax requirements will be registered just as you have done in the past and his name will be entered on the registration record you presently are using which contains the names of the persons who have previously registered and still meet the registration requirements under this section. This record will be known as the *ROLL OF PERSONS REGISTERED FOR ALL ELECTIONS*.

SECOND—PERSONS REGISTERING TO VOTE IN FEDERAL ELECTIONS ONLY—SECTION 24-67.1

The name of the person who applies to you to register for **FEDERAL ELECTIONS ONLY** who has met the resident and age qualifications, but who has not paid all State poll taxes assessed or assessable against him, should be entered in a separate registration record or system known as *ROLL OF PERSONS REGISTERED FOR FEDERAL ELECTIONS ONLY*. This person does not have to file a certificate of continuing residence in this his year of registration since that in itself is proof of his residence for that year.

Since most cities and counties having general registrars have set up individual systems, I have no way of knowing just how you keep your records. However, I want to strongly impress upon you that I definitely feel that it is the intent of the law for two separate records to be kept. I have discussed this matter with Honorable Kenneth C. Patty, First Assistant Attorney General, and he whole-

heartedly concurs with me that two *Separate records must be kept*. We are providing a registration book for Federal Elections Only for the county precinct registrars. It might be that some of the general registrars might decide to use this book for this year and see just how this works out and then they will know just what arrangements and changes will have to be made in their system before the 1966 Federal elections take place. If you desire to use these books, let us know and we will send you the requested number when they are available for distribution [fol. 97] in March. In the meantime, we have directed the precinct registrars to have the person making application to register to vote in Federal Elections only to fill out the usual forms and if he meets the requirements and is eligible to be registered then they will just have to file the forms and when the books are mailed to them in March they will have to enter the names on the new registration books.

CERTIFICATE OF TRANSFER—SECTION 24-87.1

Whenever the registrar issues a certificate of transfer he shall show on the certificate whether the person to whom the transfer is issued was registered under the provisions of Section 24-67 or Section 24-67.1. The registrar receiving the transfer shall enter the name of the person on the registration book or other type of record of that precinct maintained for persons registered under the section shown on the certificate of transfer on its appearing to his satisfaction that the person to whom the certificate was issued has resided, prior to the next election, for thirty days in the election district to which he desires to transfer. A supply of forms for this purpose is enclosed.

LIST OF PERSONS REGISTERED TO BE POSTED AND CERTIFIED TO CLERK—SECTION 24-78.

When you make up this list just as you have been required to do in the past, you will simply make two separate lists—one showing the names of the persons registered under Section 24-67 for all elections and the other for the persons registered under Section 24-67.1 for FEDERAL ELECTIONS ONLY.

So you see there is really very little change in the law and in your procedure for registering applicants other than keeping two separate registration records and being very careful in keeping the two types of registrations in the proper registration roll.

The new law pertaining to registrations, as well as the law authorizing persons to file certificates of continuing residence, *becomes effective on the 19th day of February, 1964.* Therefore, you will proceed to register and transfer applicants as set out above after that date. You will find enclosed a supply of the Certificate of Continuing Residence Forms for your use in supplying persons who may ask for them. In reading the law you will observe under Section 24-17.2 any person who presently is registered on your books under Section 24-67 and who desires to vote in Federal elections this year without the payment of the capitation tax may do so by merely filing this certificate of continuing residence with the treasurer of the county or city on or before May 2, 1964.

Kindly let me know if I can be of further assistance in this matter.

Sincerely yours,

STATE BOARD OF ELECTIONS

/s/ LEVIN NOCK DAVIS

Levin Nock Davis, Secretary

ENCLOSURES

[fol. 98]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 7

*Registered on "ROLL OF PERSONS REGISTERED
FOR ALL ELECTIONS" Code Section 24-67*

APPLICATION FOR REGISTRATION

NOTE: Section 20 of the Constitution of Virginia provides who may register, and expressly directs that in the written application to register the applicant shall give certain information. Below are set forth such parts of Section 20 as concern the application.

"Who May Register. Every citizen of the United States, having the qualifications of age and residence required in Section Eighteen, shall be entitled to register, provided:

"..... he make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for one year next preceding, and whether he has previously voted, and if so, the state, county, and precinct in which he voted last;

Date

Signature of Applicant

[fol. 99]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 8

*Registered on "ROLL OF PERSONS REGISTERED
FOR FEDERAL ELECTIONS ONLY"*

Code Section 24-67.1

APPLICATION FOR REGISTRATION

NOTE: Section 20 of the Constitution of Virginia provides who may register, and expressly directs that in the written application to register the applicant shall give certain information. Below are set forth such parts of Section 20 as concern the application.

"Who May Register. Every citizen of the United States, having the qualifications of age and residence required in Section Eighteen, shall be entitled to register, provided:

" he make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for one year next preceding, and whether he has previously voted, and if so, the state, county, and precinct in which he voted last; "

Date

Signature of Applicant

[fol. 100]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 9

Form C-52

Code Section 24-67

CERTIFICATE OF REGISTRATION OF A PERSON WHO PAID THE POLL TAXES REQUIRED BY SECTION 20 OF THE CONSTITUTION PRIOR TO REGISTRATION, INCLUDING THOSE WHO REGISTERED DURING THE YEAR IN WHICH THEY BECAME TWENTY-ONE YEARS OF AGE.

Virginia: City of

The undersigned Registrar for Precinct, in Ward, in the said City, hereby certifies that the person herein named is duly registered on the list of voters registered since Jan. 1, 1904, in said precinct, in said Ward, as follows, viz: Date of Registration

....., 19, Color No. Name

Date of Birth Age years, Occupation

Place of Residence

Length of Residence in State years, City Precinct

if naturalized, Date of Papers

Issued by Court of, and is registered as* exempt from payment of poll tax as a prerequisite to the right to vote. This certificate is given to enable the person named to change his place of voting to Precinct, in

..... Ward, of the City District, County of, and that his name has been erased from the registration books of the precinct first above named.

Dated this , 19

Registrar.

*Note—IF NOT exempt insert the word "not" in this blank.

Transfer should be given or mailed to the person requesting same and the voter should take it to the registrar of his new residence in order to have his name entered on the registration books in his new precinct.

[fol. 101]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 10

Form C-52A

Code Section 24-67.1

CERTIFICATE OF REGISTRATION OF A PERSON
WHO REGISTERED WITHOUT THE PAYMENT OF
POLL TAX AND IS ENTITLED TO VOTE IN ELEC-
TIONS FOR FEDERAL OFFICES ONLY.

Virginia: City of

The undersigned Registrar for Precinct,
in Ward, in the said City,
hereby certifies that the person herein named is duly regis-
tered on the list of voters registered since Jan. 1, 1904, in
said precinct, in said Ward, as follows, viz: Date of Regis-
stration

....., 19,
Color No. Name

Date of Birth Age years,
Occupation

Place of Residence

Length of Residence in State years,
City Precinct

if naturalized, Date of Papers

Issued by Court of,
and is registered as exempt from payment of
poll tax as a prerequisite to the right to vote. This cer-

tificate is given to enable the person named to change his place of voting to Precinct, in

Ward, of the City
District, of the County of
and that his name has been erased from the registration books of the precinct first above named.

Dated this 19

Registrar.

*Note—IF NOT exempt insert the word "not" in this blank.

Transfer should be given or mailed to the person requesting same and the voter should take it to the registrar of his new residence in order to have his name entered on the registration books in his new precinct.

[fol. 102]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFFS' EXHIBIT 11

Form CR-1

CERTIFICATE OF CONTINUING RESIDENCE

I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of ,

(city or county)

residing at ,

(street and number, or place of residence therein) and that it is my intention not to remove from the city or county stated herein prior to the next general election.

.....
(Signature of resident)

Witnessed:

.....
OR

70

Subscribed and sworn to before me this
day of , 19

.....
Notary Public

DEFENDANTS' EXHIBIT 29

(See Opposite) ~~15~~

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
DEFENDANTS' EXHIBIT 29

ADDRESS

OF

Albertis S. Harrison, Jr.
GOVERNOR

TO THE

GENERAL ASSEMBLY OF VIRGINIA

EXTRA SESSION

TUESDAY, NOVEMBER 19, 1963



SENATE DOCUMENT NO. 1

COMMONWEALTH OF VIRGINIA

Department of Purchases and Supply

Richmond

1963

[fol. 104]

ADDRESS OF**ALBERTIS S. HARRISON, JR.****GOVERNOR****TO THE GENERAL ASSEMBLY OF VIRGINIA****TUESDAY, NOVEMBER 19, 1963**

Mr. Speaker, Mr. President and Members of the General Assembly:

Again it becomes necessary, in the opinion of a Governor of Virginia, to convene the members of the General Assembly in extraordinary session. The preparation for such a session, and the added labors that are its incident, are more than compensated for me by the opportunity it affords to renew friendships and associations that have been cultivated through the years and grow stronger with the passage of time.

I delight in your presence in the Capitol. That you came fifty days ahead of normal schedule is the reason we must apologize for the disarray of the house in which you shall labor. I hope you will not think it indelicate if your Governor now hints, as discreetly as he can, that your visit might be terminated after a brief stay!

It is with sadness that this morning we note the absence of three former members of this Body. In the passing of State Senator Harry C. Stuart, of Russell; Delegate Melvin L. Shrëves, of Accomack; and Delegate H. Ray Webber, of Covington, Virginia has lost able and dedicated public servants, the General Assembly has lost attractive and colorful members, and you and I have lost valued friends. Each, in his own way, contributed to the commonweal, and each left his imprint on this State.

I would also note with pleasure the presence this morning of the Honorable George F. Barnes of Tazewell, the Honorable George N. McMath, of Onancock, and the Honorable George J. Kostel, of Clifton Forge. We welcome them. The privilege of serving in the General Assembly is one of the highest honors that can come to a Virginian. The opportunity for service to Virginia is without

limit, and the attachments that are formed here will bind and last as long as you live.

Section 73 of the Constitution of Virginia imposes upon the Governor the duty, "When, in his opinion, the interest of the State may require," to convene the General Assembly. The action that I have taken, in summoning you to meet this morning, was not taken precipitately. I am not unmindful that you will convene again in regular session on January 8, 1964. But neither am I oblivious of the fact that any matter that concerns the elective franchise is political and controversial, and that it would be unrealistic to expect a legislative body to approach unanimity to the point that legislation dealing with the franchise could be enacted as emergency bills during the regular session. I shall endeavor to point out in this message impelling reasons for the enactment of certain legislation, and for it to become effective sooner than ninety days after the date of the adjournment of the 1964 General Assembly.

In 1962 the 87th Congress of the United States passed Senate Joint Resolution Number 29, signed by the President on August 27, 1962, wherein it is proposed that the Constitution of the United States of America be amended, to provide that:

"the right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax."

For this amendment, which will be the twenty-fourth to the United States Constitution, to become effective, it must be approved by thirty-eight states. As of this date, thirty-six states have ratified it. And, it is probable that two additional states will give approval prior to the elections to be conducted for federal offices in Virginia in 1964. While such approval may not be forthcoming, I am of the opinion that Virginia cannot afford to take that gamble. Accordingly, it is recommended that the General Assembly enact legislation, in anticipation of the ratification of the proposed Amendment.

The purpose of Amendment 24 is to prohibit the requirement of the payment of a poll tax as a prerequisite to registration or voting in federal elections. To consider its effect on elections for federal offices, it is necessary to invite your attention to certain provisions of our Virginia Constitution.

At the outset, let me point out that the proposed Federal Constitutional Amendment will have no effect whatsoever on State or local elections, or on

[fol. 106]

any provision of the Virginia Constitution and the laws of Virginia that govern registration for, and voting in, State or local elections.

Neither will the Amendment have any effect on any Virginia Constitutional provision or law that concerns federal elections, other than in one particular,—the payment of a poll tax cannot be required as a condition for registering or voting in such an election.

It is important to understand that, consistent with the idea "that every man who lives under a government ought to contribute something to the support of that government," often expressed in the debates of the Constitutional Convention of Virginia, 1901-1902, that Convention wrote into Virginia's Constitution Section 173. By this section, the General Assembly is required to levy a State Capitation Tax of one dollar and fifty cents per annum on every adult resident of the State of Virginia.

Of this tax, one dollar is applied in aid of public schools, and fifty cents thereof returned to the localities. The capitation tax in Virginia is but another tax. It is a debt and is due and payable by all persons on whom it is lawfully levied. It is the one tax that is universal in its application and is owed by every resident of Virginia over twenty-one years of age.

The universality of the capitation tax accounts for its being a part of the election machinery of this State. Article II of the Constitution of Virginia contains twenty-two sections and deals with Elective Franchise and Qualification for Office. The one section about which, regardless of our political affiliation, partisanship or philosophy of government, there can be no dissent, is the provision that only residents of the Commonwealth of Virginia should vote in elections held in this State.

Borrowing again from the debates of the Constitutional Convention of 1901-1902,—and I quote—"this provision as to residence was recommended in the Constitution in order that the voter may be thoroughly identified with the community and may have common lot with the people of the State, by a fixed residence in the State for a definite period." The period of residence remained two years from the Convention of 1902 until 1928, when it was reduced to one year.

I deem it pertinent here to invite your attention to the language of Section 6 of the Virginia Bill of Rights, which, after providing that all elections ought to be free, goes on further and says: "... and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage"

If any one provision of our organic law is to be accorded more respect and

importance than another, I would say that the one which we must hold inviolate, and around which we must throw the greatest protection, is that which confines participation in Virginia elections to residents of this State.

Certainly the framers of the Constitution of Virginia were so persuaded. Time will not permit a discourse here on the history of suffrage in Virginia. It suffices to say now that when the members of the Convention who wrote the present Constitution reviewed that history, they found that, except for a few occasions and for short periods, the right to vote in Virginia had always been on a restricted basis, and that Virginians had repeatedly expressed the desire for a restricted electorate. Notwithstanding this background, they knew that if participation were confined to residents of Virginia, and proper publicity given to elections and the list of persons allegedly qualified to vote, there could be a relaxation as to any property qualification as a prerequisite to voting.

As a consequence, and operating under the Constitution of 1902, Virginia has the simplest system of registration and voting of any State in the Union. Any resident of Virginia, with sufficient intelligence to know such things as his name, age, date and place of birth, residence and occupation, and can scribble a legible signature, can register. He need own no property—or pay any taxes, other than a \$1.50 a year capitation tax, for not exceeding three years. Once admitted to registration, he is registered permanently. Unlike so many states, Virginia does not require that this registration ever be renewed.

The framers of our Constitution recognized that if we were to have permanent registration, and thereby promote full participation in elections by the residents of this State, a means would have to be devised to provide annually a current list of the residents of this State. Obviously, we could not rely on the registration books alone. A safeguard had to be provided to determine whether those persons who had registered were still residents of Virginia and entitled to participate in the election in which they offered to vote.

A person who removes himself from this State and abandons his residence here, is not entitled to vote in this State. By the same token, Virginia is gaining population rapidly, and it is important that these welcomed new citizens be registered and encouraged to vote immediately they satisfy the conditions, both as to residency and registration incident to voting.

The architects of the Constitution, having determined upon permanent registration, and having abandoned the requirement of ownership of property as a qualification to vote, and then having failed to provide any effective literacy test, were confronted with the problem of how the electorate could be restricted to residents of this State,—and some stability attained.

[fol. 108]

Obviously they could not use the real estate or personal property tax list, for ownership of property was not to be made a condition for voting, and for the further very practical reason that many residents of Virginia do not own real or personal property, but do possess the intelligence, interest, and the ability to exercise the right of franchise.

It became apparent that the only list which should contain the name of every adult resident of Virginia was the capitation tax list. Accordingly, and out of the genius of that body of men, originated our present system, whereby it is presumed that any person, assessed with a capitation tax (and thereby alleged to be a resident of Virginia), who comes forward and voluntarily pays the assessment, six months prior to a general election, shall be presumed to be a resident of Virginia, and shall be deemed to have satisfied those provisions of the Constitution of this State which restrict voting to such residents.

Again I remind you that the capitation tax is Virginia's only universal tax that is assessed on every adult. It is a debt and is owed like all other taxes. It is paid by the citizens of this State in the same manner as a good citizen pays his other tax obligations. Because the tax is universal, the names and addresses of the persons against whom it is assessed are obtained by the Commissioners of Revenue from innumerable sources, and in some instances, the tax is assessed erroneously and inadvertently on people who have moved from Virginia, people who are dead, and some who are nonexistent. Certainly the voluntary payment of this tax by a person is fairly conclusive proof of the correctness of the assessment, and confirmation by that person of the fact that he is still a resident of this State.

In any event, this system has served Virginia well for more than a half a century. Last year, approximately one and a quarter million Virginians paid this tax.

The requirement that the tax be paid six months prior to the General Election is to prevent fraud, corruption and dishonesty, and to promote stability in the electorate.

To understand the six-month provision in our Constitution, one must have some knowledge of the conditions that existed in Virginia prior to the Constitutional Convention of 1901-1902. In that Convention, it was acknowledged time and again, by gentlemen from all sections of the State, that politics in Virginia were then corrupt; that there was a large purchasable element; that voters were bought and sold; that manipulation of voters by corrupt political leaders often constituted the balance of power in elections. It is interesting to note here that one of the members of the Convention, in commenting on this

corruption said: "It is not the Negro vote which works the harm . . . it is the depraved and incompetent men of our own race, who have nothing at stake in government, and who are used by designing politicians, to accomplish their purposes, irrespective of the welfare of the community."

It was because of this background that those who wrote the laws, under which we now operate, determined that participation in Virginia's elections would be encouraged by all interested citizens and those who had a stake in Virginia, and further that Virginia would throw around her elections, and the participants therein, every possible protection. This they accomplished, first by requiring those who desired to participate in elections to attest their residency by payment of a lawful tax, six months prior to the General Election.

Certainly there is no individual possessing the interest and concern to have a voice in his government who does not know, six months in advance, that he will want to vote on who is to represent him at all levels of government, and on all the issues properly to be submitted to the people.

Then, as an added safeguard, they wrote Section 38 of the Constitution, imposing specific duties on Treasurers, Clerks of Court and Sheriffs, in regard to the making, filing, certifying and publicizing the list of those who had paid poll taxes. And they required all of this to be done well in advance of any primary or General Election. The list is not only available for inspection in the office of every Clerk, but it must be posted at every polling place, and is thereby accessible for inspection by every citizen and every person who passes by. It is this publicity that has the prophylactic effect. It is the finest medium ever devised to prevent fraud and improper voting by non-residents of Virginia, or by any person who is not qualified from a residential standpoint to vote in a Virginia election.

Section 36 of the Virginia Constitution imposes upon this Body the responsibility to "enact such laws as are necessary and proper for the purpose of securing the regularity and purity of general, local and primary elections . . ."

It is because of this responsibility that we are here assembled. If the proposed Amendment 24 to the United States Constitution is adopted, and payment of the poll tax can no longer be a prerequisite to registering or voting, we will have no adequate safeguard under existing statutes to prevent persons who are registered, but no longer reside in this State, from voting in the 1964 elections, and in federal elections thereafter held.

In consideration of this matter, we must always keep in mind that under our system of permanent registration, a person once registered in Virginia is forever registered, until his name is purged from the list. In some of our counties

[fol. 110]

and cities, the registration books are seldom, if ever, purged. Persons are carried on some books who have been dead for years or who have long since moved their residence from Virginia, or are otherwise disqualified from voting. In a hotly contested election, the opportunity to commit fraud or irregularities would be so great and so easy that our only protection is to remove the temptation by legislation at this extra session.

It has taken me longer than I should to get to this point in my remarks to you. In brief, and in anticipation of the adoption of Amendment 24, we need to devise something which will do for Virginia in federal elections what our capitation tax list presently accomplishes. That such action would be necessary has been a matter of common knowledge for many months, and has been the subject of numerous conferences between your Governor, the Attorney General of Virginia, and others, who are concerned with preserving the purity of Virginia's elections. At my request, the Attorney General has prepared bills which I hope will have your approval. Our election laws are numerous and complicated because they involve not only federal, but State, county, city and town elections. They have evolved over a long period of years, and have come into being in an effort to promote full participation in elections and to assure their honesty. Under our Constitution, a great many public officials are charged with various responsibilities and duties to make certain that all properly registered residents of this State are permitted to vote. Therefore, we have to amend numerous sections of the Code.

However much we may disagree with the action of those states that have and will adopt the proposed Amendment 24 to the United States Constitution, we must agree that if this Constitution is to be amended, the manner in which it is being presently accomplished is legal, and certainly preferable to the judicial amendments thereto that we have witnessed in recent years.

I, therefore, recommend that this General Assembly enact a law to become effective upon the adoption of Amendment 24, prohibiting the denial or abridgement of the right of any citizen of Virginia to vote in any primary or other election for President or Vice President, or for Senator or Representative in Congress, by reason of failure to pay any poll tax or other tax.

The provisions in the Constitution of Virginia which require the payment of a capitation tax as a prerequisite to registering and voting in State and local elections, are deeply embedded therein, involve innumerable basic provisions, and will so remain until two separate General Assemblies and the people of Virginia decide otherwise. It is my considered judgment that it would be unwise to give even cursory attention or thought to tampering with Virginia's Constitution

without careful and painstaking study. Such action at this extra session would be hasty, ill advised, and not in the best interest of the people of this State.

Since the payment of a capitation tax will remain a prerequisite to voting in State and local elections in Virginia, I recommend that such payment continue to be accepted as proof of residency, and as a compliance with the residency requirement of Section 18 of the Virginia Constitution as to federal elections.

I further recommend that a bill be enacted, effective upon adoption of Amendment 24, which will give to every resident of Virginia the privilege of registering and voting, in federal elections, without regard to the payment of a capitation tax, or the time of its payment, provided he complies with other provisions of the Constitution and laws of Virginia, and, provided further, that six months prior to the General Election, he files a certificate with the Treasurer of the county, or city, in which he resides, setting forth that he is a resident of Virginia. To give such a certificate proper authenticity, it should be witnessed or acknowledged.

The Treasurer, Clerk, Sheriff and Sergeants, will be required to verify, certify and post such certifications of residence in exactly the same manner, and form, as they presently handle the list of persons who pay capitation taxes. The same publicity will attend both lists, and the same protections will prevent fraud and improper voting by both classes of voters.

In essence, the bills which are proposed will provide two methods by which residents of Virginia may register and vote in elections. One will be to comply with all existing provisions of the Constitution and laws of Virginia, including the payment of a capitation tax (which establishes residency) six months prior to the General Election. A person will thereby qualify to vote in all elections, federal, State and local. The other, which will take effect upon the adoption of the 24th Amendment, will enable any resident of Virginia to register without payment of any poll tax, and to vote without payment of such tax, in federal elections only, provided that he establishes Virginia residency by filing of the certificate of residence six months prior to the General Election.

It is, of course, unnecessary for me to remind you that all legislation enacted at this session of the General Assembly is conditioned upon the ratification of the proposed 24th Amendment to the Constitution of the United States by the necessary number of states. We concede the possibility that such ratification may not occur prior to November, 1964. Irrespective of this, we simply cannot go into the important elections of 1964, in which we will select in Virginia one United States Senator, ten Congressmen, and participate in the election of a President and a Vice President, without the necessary safeguards. The privilege

[fol. 112]

of selecting those who govern us is the most important responsibility discharged by any citizen of Virginia. Every protection should be provided to the end that this participation be not only free and full, but assured to and exercised by only those persons entitled to the privilege.

To those of you who may be tempted to rewrite the sections of our State Constitution dealing with the right of franchise, or may feel that this will be an easy accomplishment, I would remind you that the Constitutional Convention of 1901-1902 held as great an array of talent as has ever been assembled at any one time in Virginia. The one impelling and paramount reason for that Convention was the corruption, fraud and dishonesty that had crept into the political life of Virginia, and this was due in large measure to the election machinery then in operation. That Convention devoted more time, debate and prayerful consideration to the matter of suffrage, than to any other one subject. The Constitution under which we have operated for over sixty years was the out-growth of nearly two years of deliberation.

Mr. Richard McIlwaine, a member of the Convention from Prince Edward County, in addressing himself to the very subject which we are today considering, had this to say on April 1, 1902:

"It will be readily granted by every member of the Convention, that the purpose which brought us together is to frame a Constitution adapted to the needs of the people of Virginia—an instrument which when completed and adopted as the organic law of the Commonwealth, shall embody those seminal principles which are fitted in their effective application to promote the welfare of every dweller within our bounds, and to restore and perpetuate the honor and glory of the old State."

And again I would quote from the remarks of this distinguished gentleman, made on the same day, and as follows:

"Here, then, we have briefly and imperfectly, the problem given us for solution. We are to legislate for all these classes, and to meet all these conditions, in such manner that every citizen, of whatever locality or circumstance, may not only receive evenhanded justice, but find in the organic law of this State and the civil and political arrangements emanating therefrom, incentive and inspiration to elevate his character, enlarge his views of life, and improve his economic and social status."

I would remind those who would now undo the work of that great Convention, and rewrite the most basic provisions of our Constitution, to consider

for a minute the accomplishments of Virginia under her present Constitution, and how magnificently have been achieved the goals which were envisioned by that group of sincere and inspired men.

Today Virginia enjoys a status that is the envy of the residents of every state in the Union. Today, the people of this State are enjoying a progress and a prosperity that has never before been equaled. If there be any land where the people are living a rich, a full and a good life, it is Virginia. You and I are the proud citizens of a State whose name is symbolic of the word integrity, and it matters not how distant our travels may take us, you seldom meet a man or woman who does not find some way, however remote, of identifying himself with Virginia.

I wish that we, as members and former members of the General Assembly of Virginia, could take credit for this. It would be a gracious act if I could attribute the glory to my predecessors in office, the former Governors of this Commonwealth. To you and to them does go credit; but the true greatness that is Virginia lies in the rank and file of her people.

Virginia through the years has been protected and nourished by their love, their interest, their concern, their identification with the land, and their dedication. It is these people who have exercised great wisdom and judgment in the choice of their leaders; who have had the concern to appraise and to evaluate when they went to the polls; and who have valued their freedom and their property enough to pause, consider and select when a decision was theirs to make. It is to these people, the residents of Virginia, those with something at stake, with sufficient interest, and possessed of the intelligence and will to exercise the right of suffrage under the Constitution and laws of Virginia, that account for the glory of this Commonwealth.

The issue that confronts us at this session is in fact a very narrow one,—to assure that the electorate of Virginia is made up only of *bona fide* residents of this State; to make certain that the purity of our elections be preserved.

We can do Virginia no hurt if we but remember the admonition of George Mason in our Declaration of Rights "that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage."

[fol. 114]

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

DEFENDANTS' EXHIBIT 30

AFFIDAVIT

I, Robert Y. Button, Attorney General of Virginia, do hereby certify that the attached document, consisting of ten pages, is a true and correct copy of the statement made by me before a specially called meeting of the joint Privileges and Elections Committees of the House of Delegates and of the Senate of the General Assembly of Virginia on November 12, 1963, prior to the convening of the Extra Session 1963 of the said General Assembly. I do also certify that this is a true and correct copy of the statement made by me before the joint public hearing of these same Committees held on November 19, 1963, the first day of the convening of the said Extra Session 1963. I also certify that following my oral delivery of this statement to the said joint public hearing, the original thereof was filed with the Clerk of the said Committees.

/s/ ROBERT Y. BUTTON
Robert Y. Button
Attorney General

STATE OF VIRGINIA
CITY OF RICHMOND

Subscribed and sworn to before me this 20th day of April, 1964.

/s/ MABEL G. HURT
Notary Public

My Commission expires May 8, 1966

[fol. 115] The proposed 24th Amendment to the Constitution of the United States is as follows:

"Section 1, The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

"Section 2, The Congress shall have power to enforce this article by appropriate legislation."

It is clear from the hearings held in the Judiciary Committees of the Senate and House of Representatives and from the language of the amendment itself that this proposed amendment affects only the right to vote in named federal elections and has no application to the qualification of voters in State elections. In effect, this amendment makes an exception to the right of the states to set the qualifications of electors in that the failure to pay any poll tax or other tax cannot be used as a denial of the right to vote in these named federal elections. The right of the states to fix qualifications for voters is not changed in any [fol. 116] other respect.

Section 18 of our Constitution provides as follows:

"Every citizen of the United States, twenty-one years of age, who has been a resident of the State one year, of the county, city, or town, six months, and of the precinct in which he offers to vote, thirty days, *next preceding the election in which he offers to vote,* has been registered, (and has paid his State poll taxes, as hereinafter required,) shall be entitled to vote for members of the General Assembly and all officers elective by the people; but removal from one precinct to another, in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days after such removal.

"The right of citizens to vote shall not be denied or abridged on account of sex." (Italics and parentheses supplied)

The effect of the 24th Amendment, if adopted, would be that that portion of Section 18 of the Constitution "and has paid his State poll taxes, as hereinafter required" carried in the parentheses above could no longer be applicable in the named federal elections, but it would be applicable [fol. 117] in every other election. With these two fundamental statements in mind, the bills, which you are considering today, have been prepared. There is a long bill and a short bill.

Considering the long bill first, you will note that Paragraphs A and B of Section 1 are completely new. Paragraph A sets forth the purposes and reasons for the proposed legislation. This is succinctly stated as furnishing the methods by which persons can register and vote in federal elections without the payment of any poll tax or other tax, to continue in effect all other registration and voter requirements of the Constitution of Virginia that would continue as presently existing in all elections except for the named federal offices set forth in the proposed 24th Amendment to the Constitution, and to provide methods by which persons may furnish proof of continuing residence as required by Section 18 of the Constitution of Virginia.

Paragraph B simply sets forth the language of the proposed 24th Amendment to the Federal Constitution which would be binding in Virginia if and when it is finally ratified. In Virginia, under our Constitution, there is only one registration which is permanent. Section 18 of the Constitution quoted above has always required residence of a specific time *next preceding an election* in which a person offers to vote. The assessment of the capitation or poll tax is made upon residents over twenty-one years of age as required by Section 173 of the Constitution. The bill is [fol. 118] sent to a specific address. Payment admits continued residence. If a person is moving, he certainly would not pay this bill. Payment of the poll tax can therefore be accepted as admission of residence and of the intent to continue. Virginia has always accepted the payment of the poll tax as proof of continuing residence. As this method of proving continuing residence cannot be used in Federal elections, it is necessary to have legislation to provide the means of proving that the residence proven at the time of

registration has continued and that the voter intends to remain until the next general election. This is necessary in order that lists of such voters may be provided in advance of the election.

In the bills which you are considering, this has been accomplished by giving the registered voter the choice of proving his continued residence by either (1) filing a certificate of continuing residence as set forth in Section 24-17.2 or (2) qualifying to vote in State elections. Everyone qualified in State elections will be automatically qualified to vote also in federal elections, but those who qualify only to vote in federal elections will not be qualified to vote in State elections.

In considering the specific bills before you, you will find that there are only three key sections in the long bill—Sections 24-17.1, 24-17.2 and 24-67.1. The other proposed amendments or new sections are only consequential and necessary in order to dove-tail the requirement for voters who will be qualified to vote in federal elections only into our existing laws and procedures.

[fol. 119] The numbering of the sections follow the present Code provisions. Sections 24-17.1 and 24-17.2 deal with voting. Section 24-67.1 deals with registration.

I believe it would be more logical to consider the registration sections prior to considering the voting sections. Therefore, let us consider first Sections 24-67 and 24-67.1.

Paragraph A of Section 24-67 is identical in meaning with the present Section 24-67. There has been small language changes to make it conform to proposed new Section 24-67.1 but there is absolutely no change in meaning in Paragraph A from the present section.

Paragraphs B and C of Section 24-67 are completely new and are self-explanatory. I think the comments following these sections are clear and I do not know how I can add to what is said there. Paragraph B provides that there shall be a separate registration book for all persons who have already registered or who at the time of registering have paid the necessary poll tax so that the book of these registrations would be separate and distinct from those who register under new proposed section 24-67.1. Paragraph C provides that persons registering under this section shall

be entitled to vote in all elections and that persons that are entitled to register under the new Section 24-67.1 would not be entitled to vote in any elections except the election of federal offices specified therein until they shall have registered under Paragraph A of this section which is the registration after payment of poll tax. Under various sections of our State Constitution, this is necessary and essential.

Proposed Section 24-67.1 is a completely new section which provides for the registration of those persons who have met the qualifications of age, residence, and other requirements of our Constitution but who have not paid the poll tax required by our Constitution for voting in all elections but prohibited in federal elections.

Paragraph B provides that a separate registration book shall be kept for those people registering under this section and Paragraph C provides that the persons registered under this section shall be entitled to vote only in federal elections and shall not be deemed registered to vote in any other election held in the State. This is made abundantly clear in order that no one who registers may be misled.

It is absolutely necessary that there be separate books for the two types of registrants and that they not be confused. There is no difference in the requirement for registering except as to the payment of the poll tax.

After the registration has been completed, we come to Sections 24-17, 24-17.1 and 24-17.2 which relate to voting.

Section 24-17 was amended by adding the italicized word "general" which is self-explanatory and cutting out the words where the asterisk is shown "and has paid his State poll taxes as required by law" and substituting in place thereof the italicized language by spelling out the provisions without stating that the payment of such tax is "required by law". The comments under this are self-explanatory.

Section 24-17.1 is new and spells out who is entitled to vote for certain federal offices whereas Section 24-17 spells out who is entitled to vote in all elections both State and federal.

Section 24-17.2 is a completely new section which spells out how a person who does not prove his continuing residence by the payment of a poll tax may prove such continuing residence by filing a certificate of residence. This section sets forth the form but does not require the certificate to be in the identical form as in the statute but states "in form substantially as follows". Of course, the registrant proved his residence when he registered and no further certificate is required in the calendar year in which he registered. This certificate states that he has been a resident of Virginia since the date of his registration; that he is now a resident, giving his address, and that it is his present intention to remain a resident of Virginia until the next general election to which this certificate has application. This meets the requirement of Section 18. It is nothing new except as to manner of proving what has always been required. And it is provided in Paragraph A of this section that such continuing residence may be proven by filing the certificate above referred to or by making himself qualified to vote in Virginia State elections which [fol. 122] includes the payment of the required poll tax. Such certificate provided by Paragraph B shall be filed with the treasurer of his city or county not earlier than the first of October of the year next preceding in which he offers to vote and not later than six months prior to the election. Paragraph D of this section provides that the treasurer shall keep these certificates in his office for public inspection for at least two years after the same have been filed; and Paragraph E provides that nothing in this or any other section of this Act shall be construed as effecting in any way the provisions of law relating to the voters in the armed services.

Section 24-28.1 is a new section which provides for the preparing and furnishing of such books as may be necessary for the registration of those who register for voting in federal elections only and makes an appropriation to meet the expense of securing the books.

Section 24-78 has been amended to provide for the posting and certifying of both lists, that is the present list that has always been posted in regard to State elections and a new list provided herein for federal elections only.

The timing and method of handling is the same in both cases.

Section 24-79 provides that the Clerk shall record in separate books the two lists provided for by these Acts. [fol. 123] Section 24-87.1 is a new section that permits the transfer of people who register under the new section for federal elections only and provides that such transfer be placed in the proper book in the new precinct for federal elections only.

The other sections amended or new sections simply refer to the duties of the officers relative to the new lists of people who are qualified to vote in federal elections. They are to make the procedures with reference to voter lists as nearly the same as possible.

Section 3 of this Bill is the usual severability clause which is the same as has been used many times in the past and needs no amplification.

Paragraph 4 is the effective date that this act would become effective and provides that it shall become effective when the proposed 24th Amendment to the United States Constitution is ratified by the requisite number of states or ninety days after the adjournment of the Special Session of the General Assembly at which it is enacted which ever may occur later; and this means that if the proposed Amendment 24 to the United States Constitution should never be ratified this bill would never become effective.

The second Bill, or the short bill, applies only to the calendar year 1964 and is made necessary by the possibility that the 24th Amendment to the United States Constitution might be adopted some time during the calendar year 1964 too late for the certificate of residence to be filed under the long bill. This provides an opportunity for those persons [fol. 124] who may want to file the certificate of residence and be qualified to vote in the 1964 federal elections to do so without the payment of any poll tax or other tax if the 24th Amendment is ratified. The mechanics of the bill in short form are the same as the mechanics of the long bill. The certificate of continuing residence is the same and would be filed not later than six months prior to the general election held in 1964. In order for this bill to have any effect, it would have to be passed as an emergency

bill. It also carries an appropriation so that books may be furnished to the treasurer in which to record the certificates filed.

A sincere effort has been made to make the proposed legislation as simple and as easily understood as possible. There are references to various Code section numbers, which is always confusing, but this is much simpler than writing out in full what is in the section mentioned. Many sections of the Code had to be amended in order to provide for the new list of voters. The handling of both the old list and the new list was made the same as to times and procedures. This should avoid a lot of confusion in the administration of these laws.

DEFENDANTS' EXHIBIT 31

(See Opposite) ~~Exhibit 31~~

[fol. 125]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANT'S EXHIBIT 31

SUGGESTED CHANGES TO
VIRGINIA ELECTION LAWS
IN CONNECTION WITH
PROPOSED 24th AMENDMENT TO
THE CONSTITUTION OF UNITED STATES
WITH COMMENTS

A BILL

To authorize persons, in anticipation of ratification of the 24th Amendment to the Constitution of the United States, to file certificates of continuing residence so as to be able to vote, if otherwise qualified, in Federal elections to be held in the year 1964 without payment of a poll tax, to prescribe certain duties of the State Board of Elections, and to make an appropriation to the State Board of Elections.

Be it enacted by the General Assembly of Virginia:

1. (1) During the calendar year 1964 only and subject to the other provisions of this Act, every resident of Virginia who has been registered to vote prior to December 1, 1963, and who desires to vote during the calendar year 1964 without the payment of poll tax or any other tax, upon the adoption of the proposed 24th Amendment to the Constitution of the United States, in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in the Congress of the United States, may file a certificate of continuing residence in the office of the treasurer of his county or city, which shall be in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of _____ (city or county), residing at _____ (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

or

Subscribed and sworn to before me this _____ day of
_____, 19____.

Notary Public"

Such certificate shall be filed not later than six months prior to the general election held in November, 1964. Every such certificate shall bear the signature of the person offering the same and shall be verified by his affidavit or witnessed by at least one adult. Such certificate shall be conclusive of the facts stated therein, subject only to challenge under the provisions of § 24-253 of the Code.

(2) Such certificate shall be received by the treasurer, dated and marked filed, and upon the ratification of the proposed 24th Amendment to the Constitution of the United States, shall have the same force and effect as certificates of continuing residence filed under the

[fol. 127]

provisions of § 24-17.2 of an Act of the General Assembly enacted at the special session of the General Assembly, 1963.

(3) The State Board of Elections shall forthwith prepare and distribute to the several county and city treasurers books in which such treasurers shall record the certificates of residence as provided for in this Act. The certificates filed in the office of such treasurer shall be entered on such books alphabetically and by magisterial districts in counties and by wards or other election districts in cities.

2. There is hereby appropriated out of the general fund in the State treasury to the State Board of Elections a sum sufficient estimated at one thousand dollars.

3. An emergency exists in that the ratification of the proposed 24th Amendment to the Constitution of the United States may be proclaimed at any time, with the result that new procedures may be necessary to facilitate voting at the primaries and general elections in 1964, and accordingly this Act is in force from its passage.

COMMENT

The object of this Bill which has an emergency clause is for the purpose of enabling persons who expect to vote in federal elections without the payment of a poll tax to file the certificates provided for in the following Bill in ample time.

A BILL

To amend and reenact §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124 of the Code of Virginia, and to amend the Code of Virginia by adding thereto sections numbered 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, all of which amended and new sections relate to registration and voting in State, local and Federal elections, and to the duties of certain election officials; and to make an appropriation to the State Board of Elections.

Be it enacted by the General Assembly of Virginia:

1. (a) Pursuant to the mandates of the Constitution of Virginia (including, without limitation, the provisions of Section 6 and Section 36 of the Constitution of Virginia), this Act is passed (1) to enable persons to register and vote in Federal elections without the payment of poll tax or other tax as required by the 24th Amendment to the Constitution of the United States, (2) to continue in effect in all other elections the present registration and voting requirements of the Constitution of Virginia, and (3) to provide methods by which all persons registered to vote in Federal or other elections may prove that they meet the residence requirements of Section 18 of the Constitution of Virginia.

(b) The right of any citizen of the Commonwealth of Virginia to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress of the United States, or to register to vote in any such primary or other election, shall not be denied or abridged by reason of failure to pay any poll tax or other tax.

2. That §§ 24-17, 24-67, 24-78, 24-79, 24-120, as amended, § 24-121, as amended, §§ 24-122, 24-123 and 24-124, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding §§ 24-17.1, 24-17.2, 24-28.1, 24-67.1, 24-87.1, 24-119.2 and 24-128.1, the amended and new sections being as follows:

Suggested Amendment to § 24-17

§ 24-17. Persons entitled to vote at all general elections.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year; of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the *general election*, in which he offers to vote, has been duly registered *under the provisions of § 24-67, and who, at least six months prior to such election in which he offers to vote, has personally paid to the proper officer all State poll taxes assessed or assessable against him for three years next preceding such election*, and is otherwise qualified, under the Constitution and laws of this State, shall be entitled to vote for members of the General Assembly and all officers elective by the people. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

COMMENT

Re: § 24-17

This section presently states the qualifications required of all persons offering to vote in all elections held in this State, in conformity with Section 18 of the Constitution of Virginia. It must be amended to take care of the different qualifications required in State and Federal elections, respectively.

(a) This section has always been interpreted by the Attorney General to apply only to *general elections* since §§ 24-22 and 24-367 state the qualifications required for voting in special elections and primary elections, respectively. The first amendment in line 4 adds the word "general" before the word "elections."

(b) The second amendment is made necessary in view of the proposed amendments to § 24-67 and the proposed enactment of new § 24-67.1, which, respectively, will require that separate lists be kept of (i) persons registered to vote in all elections, and (ii) persons registered to vote only in Federal elections. The amendment adds in line 5 a specific reference to registration under § 24-67 to make it clear that persons entitled to vote in State elections must be registered under that section.

[fol. 129]

(c) The third amendment in lines 6-9 simply rewords for clarity the present requirement that persons voting in State elections shall have paid poll taxes as required by Sections 18 and 21 of the Constitution of Virginia.

Suggested New § 24-17.1

§ 24-17.1. Persons entitled to vote only at elections for certain federal officers.—Every citizen of the United States twenty-one years of age, who has been a resident of the State one year, of the county, city or town, six months, and of the precinct in which he offers to vote thirty days next preceding the general election, in which he offers to vote, and who has been duly registered under the provisions of § 24-67, but who, at least six months prior to such election in which he offers to vote, has not personally paid to the proper officer all State poll taxes assessed or assessable against him for three years next preceding such election, or who has been duly registered under the provisions of § 24-67.1, in either case if he is otherwise qualified under the Constitution and laws of this State, shall be entitled to vote in the following elections and no other: primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States. Removal from one precinct to another in the same county, city or town, shall not deprive any person of his right to vote in the precinct from which he has moved, until the expiration of thirty days from such removal.

COMMENT

Re: § 24-17.1

Section 24-17.1 is a new section which states the qualifications to vote in Federal elections held in this State, in conformity with the proposed 24th Amendment to the Constitution of the United States and Section 18 of the Constitution of Virginia. These qualifications are the same as the qualifications stated in § 24-17 with two exceptions. First, a person offering to vote in a Federal election may be registered on either of the lists required by proposed §§ 24-67 and 24-67.1. Secondly, the payment of poll taxes is not required as a condition of voting in any Federal election. Thus, § 24-17.1 allows any registered voter to vote in Federal elections, even if he has not paid poll taxes as required by Sections 18 and 21 of the Constitution of Virginia.

Suggested New § 24-17.2

§ 24-17.2. Proof of residence required; how furnished.—(a) No person shall be deemed to have the qualifications of residence required by Section 18 of the Constitution of Virginia and §§ 24-17 and 24-17.1 in any calendar year subsequent to that in which he registered under either § 24-67 or § 24-67.1, and shall not be entitled to vote in any election held

in this State during any such subsequent calendar year, unless he has offered proof of continuing residence by filing in person, or otherwise, a certificate of residence at the time and in the manner prescribed in paragraph (b) of this section, or, at his option, by personally paying to the proper officer, at least six months prior to any such election in which he offers to vote, all State poll taxes assessed or assessable against him for the three years next preceding that in which he offers to vote. Proof of continuing residence may only be established by either of such two methods.

(b). Any person who shall offer proof of continuing residence by filing a certificate of residence as provided in paragraph (a) of this section, shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate in form substantially as follows:

"I do certify that I am now and have been a resident of Virginia since the date of my registration to vote under the laws of Virginia, that I am now a resident of _____ (city or county), residing at _____ (street and number, or place of residence therein), and that it is my present intention not to remove from the city or county stated herein prior to the next general election.

Witnessed:

or

Subscribed and sworn to before me this _____ day of _____, 19_____

Notary Public".

Every such certificate shall bear the signature of the person offering the same, and shall be verified by his affidavit or witnessed by at least one adult.

(c) Proof of continuing residence by either of the two methods provided for in paragraph (a) of this section shall be deemed conclusive, subject only to challenge under § 24-253.

(d) The treasurer shall keep in his office for public inspection, for at least two years after the same are filed, the certificates mentioned in paragraph (b) of this section.

(e) Nothing contained in this or any other section of this Act shall be construed as affecting any of the provisions of Chapters 2.1 and 13.1 of Title 24 of the Code relating to voters in the armed services.

[fol. 131]

COMMENT**Re: § 24-17.2**

This is a new section requiring voters registered under §§ 24-67 or 24-67.1 to offer proof of residence in each year following the year of registration in conformity with Section 18 of the Constitution of Virginia. In the year of registration, the application for registration will constitute sufficient proof of residence.

Proof of residence may be furnished in person or otherwise by either of two prescribed methods, and no other way. Continuing residence may be annually established by (i) payment of the poll tax, thus continuing this long established method, or (ii) filing a certificate of residence in the form set forth in paragraph (b) of § 24-17.2 with the treasurer of his county or city not earlier than October 1 of the year preceding that in which he offers to vote and not later than six months prior to the election at which he offers to vote.

Notwithstanding the presumption raised by paragraph (c) of § 24-17.2, a voter's residence qualifications under either method may be challenged under § 24-253 of the Code of Virginia as is the case under present law.

Suggested New § 24-28.1

§ 24-28.1. State Board of Elections to furnish certain books and forms; appropriation therefor.—The State Board of Elections shall prepare such books as needed for use in recording the list of persons who have registered without the payment of a poll tax and forms for the filing of certificates of continuing residence and for the transfer of voters. Such books and forms shall be furnished by the Board to the clerks of the circuit courts of the counties and the corporation courts of the cities, to be by them distributed to the registrars and other election officials of their respective election districts. The Board shall as soon as possible after the effective date of this section, furnish to each registrar in the State at least one of each of such books and forms along with printed instructions as to the purpose of the forms.

The Board shall as soon as possible after the passage of this Act cause to be printed a supplemental compilation of the election laws of this State, which shall include all the provisions of this Act and shall distribute the same to the election officials throughout the State. A sum sufficient not exceeding one thousand dollars is hereby appropriated out of the general fund of the State to the State Board of Elections for the purpose of paying the expenses incurred under this section.

COMMENT**Re: § 24-28.1**

This section is for the purpose of requiring the State Board of Elections to prepare and furnish to the election officials certain books and forms deemed necessary on account of these amendments and making appropriation therefor.

Suggested Amendment to § 24-67

§ 24-67. *Who to be registered for all elections.*—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, * at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, and who * has paid to the proper officer all State poll taxes assessed or assessable against him for three years next preceding such election, or if he come of age at such time that no poll taxes shall be assessable against him for the year preceding the year in which he offers to register, has paid one dollar and fifty cents in satisfaction of the first year's poll tax assessable against him.

(b) *The names of all persons who have been registered under paragraph (a) of this section shall be enrolled in the registration book or type of record in use on the effective date of this Act, which shall be known as "Roll of Persons Registered for All Elections."*

(c) *Persons registered under paragraph (a) of this section shall be registered to vote in every general, special or primary election held in this State; provided that no person registered under § 24-67.1 shall be deemed registered to vote in any general, special or primary elections except those elections for the offices enumerated in paragraph (c) of § 24-67.1, until he shall have been registered under paragraph (a) of this section 24-67.*

*COMMENT**§ 24-67*

A condition of registration under Section 20 of the Virginia Constitution is the payment of all poll taxes assessed or assessable against the registrant for the three years next preceding that in which he offers to register. Payment of poll taxes for the three years preceding the year of election and registration are both conditions of voting under Section 18 of the Constitution of Virginia. The 24th Amendment to the Constitution of the United States, if adopted, will invalidate payment of the poll tax as a qualification for voting in Federal elections only, and also will necessarily invalidate payment of the poll tax as a qualification for registration for voting in Federal elections. With respect to all other elections, the Constitution of Virginia will still require the payment of poll taxes as a qualification for both registration and voting.

Hence, in order to comply most simply with the mandates of both the 24th Amendment and the Constitution of Virginia, it will be necessary to maintain two registration lists—one for persons qualifying to vote only in Federal elections and one for persons qualifying to vote in all elections (State and Federal).

Section 24-67 will continue to provide for the registration of all persons who wish to register to vote in all elections.

Paragraph (a) of proposed § 24-67 continues the same qualifications for registration for voting in all general elections as are now contained in Section 20 of the Constitution of Virginia, including the payment of all poll taxes assessed or assessable for the three years preceding the year of registration.

[fol. 133]

Paragraph (b) of the new section provides for a separate roll book or other record to contain the names of all persons who register under § 24-67.

Paragraph (c) provides (i) that persons registered under § 24-67 shall be registered to vote in all elections held in Virginia, and (ii) that persons registered under § 24-67.1 for voting in Federal elections only shall not be entitled to vote in other elections until, as the Constitution of Virginia requires, he shall have registered under § 24-67. The 24th Amendment does not change this for State elections.

Suggested New § 24-67.1

§ 24-67.1. Who to be registered only for Federal elections.—(a) Each registrar shall register pursuant to the provisions of this paragraph every citizen of the United States, of his election district, who shall apply in person to be registered at the time and in the manner required by law, who, at the time of the next general election, shall have the qualifications of age and residence required in Section 18 of the Constitution of Virginia, but who has not paid all State poll taxes assessed or assessable against him as required in Section 20 of the Constitution of Virginia and § 24-67.

(b) The names of all persons who have been registered under paragraph (a) of this section, shall not be enrolled in the registration books referred to in § 24-67, but shall be enrolled in a separate registration book or other type of record, which shall be known as "Roll of Persons Registered for Federal Elections Only."

(c) Persons registered under paragraph (a) of this section shall be registered to vote only in primary or other elections for President or Vice-President of the United States, for electors for President or Vice-President of the United States, or for Senator or Representative in the Congress of the United States, and shall not by virtue of registration under this section be deemed to be registered to vote in any other general, special or primary elections held in this State.

COMMENT

Re: § 24-67.1

Section 24-67.1 is a new section providing an alternative method of registration for persons who wish to qualify to vote without payment of poll taxes but thereby limit their voting to Federal elections only.

Paragraph (a) parallels the conditions of registration contained in Section 20 of the Constitution of Virginia except the condition with respect to the payment of poll taxes, which is omitted.

Paragraph (b) provides for a separate roll book or other record to contain the names of all persons who register under § 24-67.1.

Paragraph (c) provides that all persons registered under § 24-67.1 shall be registered to vote in Federal elections only. For the reasons indicated in the comment to § 24-67, a person once registered under § 24-67.1 who later wishes to pay the poll tax and vote in all elections held in this State must register under § 24-67.

Suggested Amendment to § 24-78

§ 24-78. *Lists of persons registered to be posted and certified to clerk.*—It shall be the duty of the registrar within five days after each sitting to have posted at three or more public places in his jurisdiction separate written or printed lists of the names of all persons so admitted to registration, under §§ 24-67 and 24-67.1, respectively, and at the same time to also certify to the clerk of the circuit court of the county, or the corporation court of the city a true copy of such lists, and to have each list posted on the day of the election at each place of voting in his jurisdiction, showing the names of such registrants residing in that precinct.

COMMENT*Re: § 24-78*

Section 24-78 has been amended to provide for the posting and certification of both registration lists provided for in §§ 24-67 and 24-67.1.

Suggested Amendment to § 24-79

§ 24-79. *Clerk to record such lists.*—It shall be the duty of the clerk, upon receipt of such lists, to forthwith record in separate suitable books, to be kept in his office for that purpose, the names of the registered voters so certified, in alphabetical arrangement.

COMMENT*Re: § 24-79*

Section 24-79, as amended, will require clerks of court to maintain two books—one for the recordation of the names of all persons registered under § 24-67 and one for the recordation of the names of all persons registered under § 24-67.1.

Suggested New § 24-87.1

§ 24-87.1. *Designation of type of registration in certificate of transfer.*—Whenever any registrar shall issue a certificate of transfer under any provision of this chapter, he shall show on the certificate of transfer whether the person to whom the transfer was issued was registered under the provisions of § 24-67 or § 24-67.1. It shall be the duty of the registrar receiving the transfer, on its appearing to his satisfaction that the person to whom the certificate was issued has resided, prior to the next election, for thirty days in the election district to which he desires to transfer, to enter the name of such person on the registration books or other type of records of that precinct maintained for persons registered under the section shown on the certificate of transfer.

[fol. 135]

COMMENT**Re: § 24-87.1**

Section 24-87.1 provides that when a voter transfers his registration, his certificate of transfer shall indicate whether he is registered under § 24-67 or § 24-67.1. This is to insure that such voter will be placed on the proper registration list of his new precinct.

Suggested New § 24-119.2

§ 24-119.2 Applicability of certain sections.—*The provisions of §§ 24-68 through 24-119.1, inclusive, shall be applicable mutatis mutandis to persons registered under the provisions of § 24-67.1.*

COMMENT**Re: § 24-119.2**

This section makes all current registration laws applicable to § 24-67.1 registrants except where expressly stated to the contrary.

Suggested Amendment to § 24-120

§ 24-120. Treasurer to file lists with clerk.—The treasurer of each county and city shall, at least five months before the second Tuesday in June in each year in which a regular June election is to be held in such county or city, and at least one hundred and fifty-eight days before each regular election in November, file with the clerk of the circuit court of his county or the corporation court of his city (1) a list of all persons in his county or city who have filed certificates of residence under § 24-17.2, and (2) a separate list of all persons in his county or city who have paid, not later than six months prior to each of such dates the State poll taxes required by the Constitution of this State during three years next preceding that in which such election is to be held, which lists shall state the white and colored persons separately, if known, and shall be verified by the oath of the treasurer. The treasurer shall, in each such list, designate as a tribal Indian any person who requests to be so designated and who shall have furnished the treasurer with an affidavit, made by the Chief of any Indian tribe existing in this State, that such person is a member of such tribe and to the best knowledge and belief of the Chief is a tribal Indian as defined in § 1-14 of the Code of Virginia.

COMMENT**Re: § 24-120**

Section 24-120 is amended to require the treasurer of each city and county to file with his clerk of court a list of all persons in his county or city, who have filed certificates of residence under § 24-17.2. This list is filed along with, but separately from, the list of persons who have paid their poll taxes (which latter is already required by § 24-120). Otherwise, § 24-120 is unchanged.

Suggested Amendment to § 24-121

§ 24-121. Clerk to deliver copies of lists to sheriff or sergeant who shall post same; record of returns.—The clerk within ten days from the receipt of the lists filed pursuant to § 24-120 shall make and certify a sufficient number of copies * of each list, and shall deliver one copy of each list for each voting place in his county or city and one copy of each list for each of the registrars in * his county or city to the sheriff of * his county or sergeant of * his city, whose duty it shall be to post one copy of each list without delay, and in no event later than five days after receipt thereof, at each of the voting places and to deliver one copy of each list to each of the registrars in the county or city and within ten days from the receipt thereof to make return on oath to the clerk as to the places where and dates at which such copies were respectively posted and delivered. The clerk shall record the returns in a book kept in his office for the purpose. However, no failure upon the part of the sheriff or sergeant to deliver a copy of * such lists or either of them to any registrar shall operate to invalidate an election.

*COMMENT**Re: § 24-121*

Section 24-121 has been amended to provide for the certification, delivery and posting of both lists furnished by the treasurer pursuant to § 24-120.

Suggested Amendment to § 24-122

§ 24-122. Clerk to retain copies for public inspection.—The clerk shall keep in his office for public inspection, for at least sixty days after receiving the lists filed pursuant to § 24-120, not less than ten certified copies * of each list.

*COMMENT**Re: § 24-122*

This section which relates to retention by the clerk of poll tax lists has been amended so as to make it applicable to both lists furnished by the treasurers pursuant to § 24-120, as amended.

Suggested Amendment to § 24-123

§ 24-123. Correction of lists.—Within thirty days after the lists filed pursuant to § 24-120 have been so posted any person who shall have reason to believe that his name has been improperly omitted from either of such certified lists, may, after five days' written notice to the treasurer, apply to the circuit court of his county, or corporation court of his city, or to the judge thereof in vacation, to have the same corrected and his name entered thereon, which application the court or

judge shall promptly hear and decide. If it be decided that the name was improperly omitted, the judge shall enter an order to that effect and the clerk of the court shall correct the list furnished him by the treasurer accordingly, and deliver a certified copy of such corrected list to the judges of election at the precinct at which such voter is registered. It shall be the duty of the treasurer to revise the lists within ten days after *they have been posted as aforesaid and to correct any omissions or clerical or typographical errors.*

COMMENT

Re: § 24-123

This section which relates to correction of poll tax list has been amended so as to make it applicable to both lists furnished by the treasurers pursuant to § 24-120, as amended.

Suggested Amendment to § 24-124

§ 24-124. Duty of clerk to deliver lists with poll books, and forward copies to Comptroller.—The clerk shall deliver, or cause to be delivered, with the poll books at a reasonable time before every election, to one of the judges of election of each precinct in his county or city, a like certified copy *of each list filed pursuant to § 24-120, and the poll tax list shall be conclusive evidence of the facts therein stated for the purpose of voting.* The clerk shall also, within sixty days after the filing of the *poll tax list* by the treasurer, forward a certified copy thereof, with such corrections as may have been made by order of the court or judge, to the Comptroller, who shall charge the amount of the poll taxes stated therein to such treasurer, unless previously accounted for.

COMMENT

Re: § 24-124

This section which relates to delivery by the clerk to the judges of election has been amended so as to make the first sentence thereof applicable to both lists furnished by the treasurers pursuant to § 24-120, as amended, and to make the second sentence applicable only to the poll tax list furnished pursuant to § 24-120.

Suggested New § 24-128.1

§ 24-128.1. Evidence of filing certificate of residence on transfer.—*In any case where a voter has been transferred from one city or county to another city or county, and has filed the certificate required by § 24-17.2, upon his request it shall be the duty of the treasurer of the county or city with whom the certificate was filed, to deliver to such person a certificate stating therein that such person filed in his office within the time prescribed by § 24-17.2 the certificate required by that section. Such certificate of the treasurer when submitted by the person*

to whom it was issued to the judges of election at the precinct at which he offers to vote shall be conclusive evidence of the facts stated therein for the purpose of voting.

Any treasurer who shall give a false certificate so as to show that the certificate of residence has been filed six months before any election when in fact it has not been so filed shall be guilty of a misdemeanor. The granting of each false certificate shall constitute a separate offense.

COMMENT

Re: § 24-128.1

This section makes provision for voter who has moved since filing a certificate of residence to obtain a certificate from the treasurer showing that he filed a certificate of residence within the time prescribed by § 24-17.2.

2. *Suggested Severability Clause.*—If any part or parts, section, subsection, sentence, clause or phrase of this act or the application thereof to any person or circumstance is for any reason declared unconstitutional, such decisions shall not affect the validity of the remaining portions of this act which shall remain in force as if such act had been passed with the unconstitutional part or parts, section, subsection, sentence, clause, phrase or such application thereof eliminated; and the General Assembly hereby declares that it would have passed this act if such unconstitutional part or parts, section, subsection, sentence, clause or phrase had not been included herein, or if such application had not been made.

3. *Suggested Effective Clause.*—This Act shall become effective on the date that the 24th Amendment to the Constitution of the United States is ratified pursuant to Article V of the Constitution of the United States and the provisions of Senate Joint Resolution 29 of the Eighty-Seventh Congress of the United States of America at the second session, which Resolution passed the Senate on March 27, 1962, and passed the House of Representatives on August 27, 1962, or such Act shall become effective ninety days after the adjournment of the session of the General Assembly at which it is enacted, whichever shall occur later.

[fol. 139]

Copy

DEFENDANT'S EXHIBIT 36

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

COMMONWEALTH OF VIRGINIA

OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

March 11, 1964

Miss Waneta M. Buckley
General Registrar for Fairfax County
Fairfax, Virginia

My dear Miss Buckley:

This will acknowledge receipt of your letter of March 4, in which you make inquiry with respect to a situation where a person has been registered under § 24-67.1 of the Code—that is, without the payment of any poll tax—and subsequently qualifies for registration and actually registers under § 24-67 of the Code. You present a series of questions as follows:

"I. May a person who registers under § 24-67.1, for Federal elections only, re-register in a future year under § 24-67, provided his required poll taxes are paid, and thereby become eligible to vote in state and local elections? YES

"A. If the answer to I. is yes, what effect would this re-registration have on the previous registration? [See comments which follow]

"1. Should the registration for *Federal elections only* become void upon re-registration for all elections, could the records of the earlier registration be removed from the registration book and other files and filed in a specific file, set up for this purpose? YES

"2. If the registration for *Federal elections only* would *not* become void upon re-registration for all elections, must we carry such persons on our records in both the registration book for Federal elections *and* the registration book for all elections?

NO

[fol. 140] "a. Should such a 'dually-registered' person request a transfer to another county, would he be issued *two* transfers? If not, on which form should he be transferred? Also, please outline the disposition of his records after the transfer has been issued. [Answer to first question]

NO

"b. If such a voter should move to another precinct in the county, would both of his registration records be transferred to a new precinct book?

NO

"(1) Would every change affecting such a voter—name-change, address-change, precinct change due to boundary line change, etc.—have to be made on both records?

NO

"c. If the name of a 'dually-registered' voter should be removed, for whatever reason, must the records of his two registrations be filed separately

NO.

"d. Should such a voter, in a future Federal election year, file a certificate of residence in lieu of paying his poll taxes, in which registration book would the Judges of election check to see if he was registered? Also, which record would be marked to indicate that he had voted? [See comments which follow]

"II. We have been advised by the State Board of Elections that voters who have registered under § 24-67, prior to December 1, 1963, cannot register under § 24-67.1.

[fol. 141] "A. Would this hold true even if the voter *asked* to have his previous registration cancelled and presented a written request for such cancellation? YES

"1. If the answer to A. is yes, would it be the responsibility of the General Registrar to deny such a request for cancellation? YES

"B. If a person who registered under Section 24-67, some years ago, and who has not paid any poll taxes for a number of years, should re-register under Section 24-67.1, *without advising the Registrar of his earlier registration*, would the re-registration be void? (Such persons would not necessarily intend to deceive the Registrar. We find that many people simply forget that they have ever registered.) [See comments which follow]

"1. If the answer to B. is yes, would it be the responsibility of the General Registrar to notify such a person that his registration under Section 24-67.1 is void because of his previous registration?"

I have indicated with either a "yes" or "no" the answer to most of your questions.

With respect to question IA d., it is obvious that unless the registrar already knows that the person filing the certificate has registered under § 24-67.1 and subsequently has registered under § 24-67 you would have to check the books in order to determine whether such person has registered under both methods. If such person has been registered under both methods, then his entitlement to vote is based [fol. 142] on § 24-67; if he has not been registered under both methods but only under § 24-67.1, then his entitlement to vote is under that section only.

Under the law and instructions which you have received, you are required to keep separate registration books showing who has been registered under both methods and as

indicated in my answer to your previous questions, whenever a person has registered under § 24-67 his registration under § 24-67.1 becomes useless and of no benefit to the person.

The thing to bear in mind is that under the election laws, as amended, whenever any person has been registered under § 24-67 such person remains registered in that category as long as he continues to be a voter in the State of Virginia and his registration under § 24-67.1, if any, should be ignored.

Specifically with respect to the second question in paragraph d., the registration record made under § 24-67 is the one that should be marked to indicate that the person has voted.

Whenever a person who has registered under § 24-67.1—that is, without the payment of poll tax—subsequently pays his poll taxes and qualifies for registration under § 24-67 and has so registered, then a notation should be made on the registration book or card where the person formerly registered to the effect that this person has re-registered under § 24-67 and that thereafter his entitlement to vote, insofar as registration is concerned, will be based solely upon his most recent registration.

Commenting upon your questions under II—your questions A and A-1—if any person has registered prior to December 1, 1963, or subsequent to December 1, 1963, under § 24-67 that person is a registered voter so long as he continues to maintain his domicile in the State of Virginia and he is not eligible to be registered under § 24-67.1 due to the fact that he can already vote in any election held in the State provided he complies with other provisions of the law. If such a voter, either in writing or verbally, should request his previous registration under § 24-67 to be cancelled, such request should be denied.

[fol. 143] With respect to II-B, if a person has been registered under § 24-67 at any time and his name has not been removed from the registration books under the purging method or by transfer, such person, of course, is en-

titled to transfer at this time if he has moved from the place where he originally registered. Under the Constitution and § 24-68 of the Code, every person who applies to register under either section is required to state therein whether he has ever voted and, if so, the State, county and precinct in which he last voted. If the person states that he last voted in Virginia in another county or city you should still take his application and determine whether or not he is still registered in the previous county and, if so, get his transfer. His application may not be processed and his name may not be placed on the registration book under § 24-67.1 if he is at that time a registered voter anywhere in this State. Of course, if he was registered in another State you have no problem.

In my opinion, a person's registration under § 24-67.1 is a nullity if he has overlooked the fact that he has previously registered. If you discover that such person has intentionally or nonintentionally stated that he has never voted in this State, you should not place his name on the registration book maintained for persons registering under § 24-67.1, but he should be required to get a transfer and, upon its delivery to you, his name would be placed on the registration book for persons registered under § 24-67. Such person would not be entitled to vote unless he filed the certificate in the time prescribed by § 24-17.2.

With respect to B-1, the last question in your letter, I assume that no answer is required in view of my answer to the other questions.

With best wishes, I am

Sincerely yours,

Robert Y. Button,
Attorney General

[fol. 144]

Copy

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANT'S EXHIBIT 37

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

March 17, 1964

Honorable F. B. Huber
Treasurer of Campbell County
Rustburg, Virginia

My dear Mr. Huber:

This will acknowledge receipt of your letter of March 13, which reads as follows:

"Section 24-17.2, paragraph (b) provides that any person wishing to offer proof of continuing residence . . . shall file with the treasurer of his county or city not earlier than the first of October of the year next preceding that in which he offers to vote and not later than six months prior to the election, a certificate. . . ."

"Does this mean that treasurers should refuse to accept these certificates between the expiration of the six months prior to the election and October 1?"

"I also foresee that registrars may accumulate certificates left with them which were properly filled out within the prescribed time but may be sent by the registrar so as to reach the treasurer after the expiration of a date six months prior to the election. How should treasurers treat such certificates?"

[fol. 145] There is nothing in the statute that prevents a treasurer from accepting these certificates during the period between the deadline date in May and the first of October. However, the treasurer cannot place such person's name on the certified list provided for in § 24-120. The treasurer must certify that the persons whose names are shown on such list have filed a certificate as required by § 24-17.2 "not earlier than October first of the preceding year and not later than the day of May (the deadline date)."

Certificates that are filed between the dates in question—that is, between the deadline date in May and October first,—should, in my opinion, be marked so as to show the date of filing and preserved, at least, until the time has elapsed when certificates will no longer be a basis for qualification to vote.

With best wishes, I am

Sincerely yours,

Robert Y. Button
Attorney General

5-21

[fol. 146]

Copy

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

DEFENDANTS' EXHIBIT 38

COMMONWEALTH OF VIRGINIA
OFFICE OF
THE ATTORNEY GENERAL
RICHMOND

March 17, 1964

Honorable R. Crockett Gwyn, Jr.
Member, House of Delegates
Marion, Virginia

My dear Mr. Gwyn:

This is in reply to your letter of March 13, which reads as follows:

"There seems to be some confusion among the voters and the Electoral Board of Smyth County as to the filing of the certificate of residence in order to vote in the Congressional election to be held this Fall.

"Will you please advise me if the certificate is necessary to be filed by a voter when the voter is qualified to vote with the exception of paying his poll tax six months prior to the election, in other words, he is duly qualified to vote only he does not pay his poll tax; and

"A young voter becoming of age since January 1, 1963 and does not want to pay a poll tax, does this person have to file a certificate of residence in order to vote; also.

"A person over 21 years of age who has never registered or paid any poll tax or voted, does this person have to file a certificate of residency six months prior to the election in order to vote in the Congressional election this Fall."

[fol. 147] I assume your first question relates to a person who is registered under § 24-67 of the Code, but has decided to discontinue the payment of poll taxes. If this is correct, such person must file the certificate six months prior to the November election in order to be able to vote in elections for President, U. S. Senator and Member of Congress. Such person would not be entitled to vote in State and local elections.

Your question (2), I assume, relates to a person who became 21 in 1963 and was registered without the payment of the poll tax. If such a person desires to vote in federal elections only in 1964, he will have to file the certificate six months prior to the November election.

The answer to your third question is in the negative. The certificate is not required for elections held during the year in which a person registers. However, the certificate will be required for all succeeding years in which such person wishes to vote.

With best wishes, I am

Sincerely yours,

Robert Y. Button
Attorney General

5-21

[fol. 148] CLERK'S CERTIFICATE (omitted in printing).

[fol. 149]

SUPREME COURT OF THE UNITED STATES

No. 360, October Term, 1964

A. M. HARMAN, JR., ET AL., Appellants,

VS.

LARS FORSSENIUS, ET AL.

Appeal from the United States District Court for the
Eastern District of Virginia.

ORDER NOTING PROBABLE JURISDICTION—October 12, 1964

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.